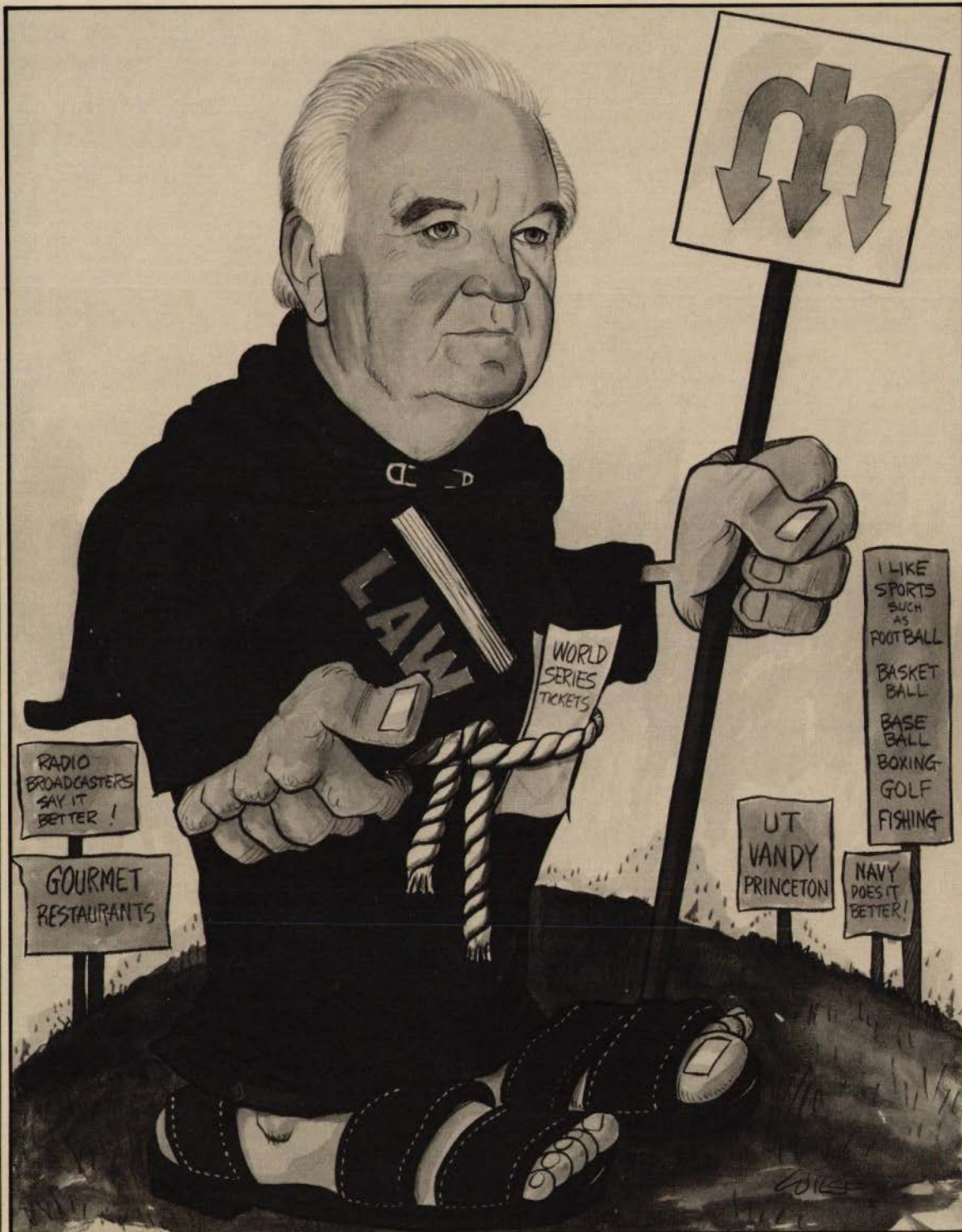
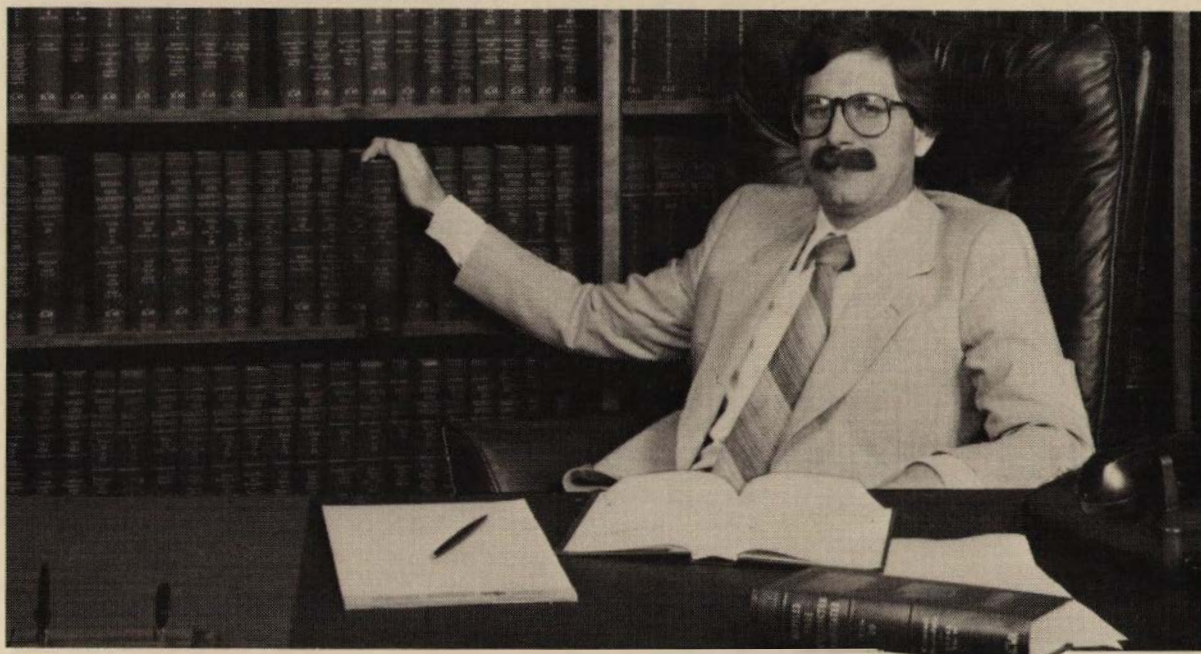


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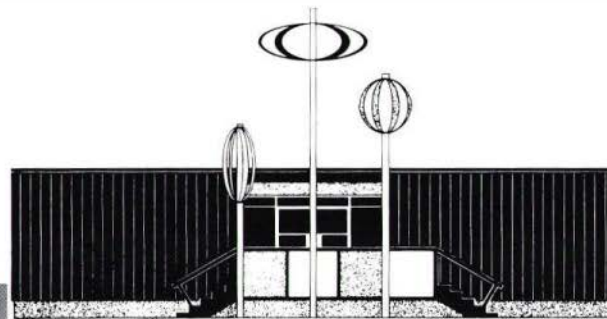
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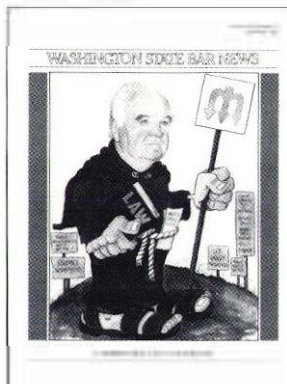
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Our Cover



G. Edward Friar retires December 31, 1981 after 10½ years of dedicated service to the Washington State Bar Association. Cover illustration by artist Robert Wilson, Jefferson City, Missouri.

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A Tough Act to Follow: A Tougher Act to Come

Because Eddie Friar's executive directorship of the Washington State Bar Association spanned more than a decade, it comes as a shock to learn that he will retire at the end of this month. A shock because some of us have come to identify the organization with the person who administers it. Bar presidents have come and gone, but for the last decade it has been the polished diplomatic skills of Eddie Friar which have provided organizational continuity. It is ironic that this silver-tongued Tennessee gentleman should have left such a strong mark upon the Northwest's largest bar association. His will be a tough act to follow.

Of course, someone will have to follow him. And whoever that new executive director will be, his or her act will be even tougher.

Although the Bar Association is sailing in relatively calm waters, the long-range forecast indicates rough weather ahead. That rough weather can be expected to come from three basic directions: from the economy, from the legislature and from within the Bar itself.

Running the Bar Association has become an expensive proposition. The estimated Bar budget for 1981-82 is approximately \$3 million. It is a safe bet that the cost of running the organization, just like the cost of everything else, will increase in the years ahead. It has to: there are more of us every year. Continuing to operate a lean, efficient bar machine will be challenge enough for the new executive director. To do so without further increases in membership dues, however, will require extraordinary managerial talents. And to raise dues again without ruffling the fur of the membership will require skills nothing short of magical.

The new executive director will surely be hamstrung by the parsimony of the times. For better or for worse, we are in that phase of the political/economic cycle when pressures mount to reduce spending, reduce services and reduce staff. This will affect, among other things, the Bar's Continuing Legal Education Program, the effectiveness of the Bar's lobbying activities and the viability of a proposed in-house malpractice insurance program.

Lawyers have never found favor in the public's eye. It is no different in 1981 than it was a hundred years ago. It is tolerable when others take potshots at us. It is intolerable, however, should they seek to enact unjust or discriminatory legislation because they want to retaliate against an imaginary "lawyer-enemy." It will be the new executive director's job to keep an eye on the legislature and the press; however, he will also have to keep an eye on us.

The Bar Association presently operates a disciplinary system which internally polices our activities. To some, the Bar's disciplinary activities look like an exercise in self-flagellation. You can be sure, however, that the Rosselini affair of 1980, "Gamscam," and this summer's controversy surrounding the office of the Administrator for the Courts, are the types of scandals which are likely to surface again in the future. If the Bar Association does not show itself willing and able to police itself, there are others who will happily volunteer to do the job for us. Ethically speaking, if the Bar Association will not or cannot do the job itself, then others must do it for us.

The new executive director will have the responsibility of carrying on the legacy that Eddie Friar left behind. This legacy is the Bar Association. He took pride in having shaped it into an efficient, respected, influential organization. We could waste that legacy if the Bar does not make spe-

cial efforts to represent all geographic regions and economic strata of the Bar. We could waste that legacy if we show that we cannot take care of our own disciplinary problems. We could waste that legacy if we over-emphasize economy to the detriment of service.

Whoever the new executive director may be, we wish him or her good luck. May the next executive director be patient, wise and diplomatic. And may he or she leave another tough act to follow.

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A Concept in Motion

This exordium is certainly the most difficult assignment of my year as President of your Bar Association and one of the most difficult for anyone at any time. The assignment is to, in some measure, do accolade justice to the magical working, waltzing, wheeling, warming, winning, waggish wonder who calls himself G. Edward Friar.

Eddie Friar will be retiring as the Executive Director of the Bar Association on December 31st. He will have been with us exactly 10½ years—precise, as he is with everything. I will waste very little of this limited space in a recital of his statistical background and experience. To do those justice would require at least one whole issue of the *Bar News*. Suffice it to say that he was a highly successful lawyer for many years and that his practice included several cases before the United States Supreme Court, other cases covered by the likes of *Life* magazine and still others were landmark cases still constituting established law. He had an outstanding political career that included a term as Secretary of State in Tennessee and caused him to be many times prominently mentioned as a candidate for Governor of that state. He was also a successful businessman, was (and is) an eloquent and compelling public speaker of consummate skill and charm and is a prolific and published writer. *Newsweek* magazine once, in a political story, quoted one of his contemporaries as saying, "Eddie has the ideas and ideals of Thomas Jefferson, the political savvy of Boss Flynn, the mind of Plato, the writing ability of Thoreau and the heart of Attila the Hun." In that same story, *Newsweek* also said, "Friar is a real enigma—there are those who think that he is the last of the big time ward heelers and others who think he is in the vanguard of a new breed of political intellectuals. In truth, he is probably considerable of both." The *New York Times*, in a round up story about politics and politicians in the South, once said of him, "Friar approaches politics with a lover's passion and a surgeon's skill." He had great success as a radio and television performer and, for example, conducted an hour long radio show for four years from the breakfast table at his home. He also did sports announcing including play by play and blow by blow of football, basketball and boxing. Incidentally, he loves all sports and once owned a minor league baseball team and also once sponsored a pro golfer on the Tour. He is probably the only eleven year old in history (he went to high school when he was eleven) to have played varsity high school football and basketball. He has been listed in *Who's Who in America* for over 30 years.



I want to write about Eddie, however, because of what he is as an individual and because of what he has done for us and meant to us. There is no way to calculate the breadth of his intellectual capacity, his store of information, the range of his interests or the scope of his ability. He knows the annual batting average of Ted Williams, Mickey Mantle, George Brett and Reggie Jackson, he knows the winning score every year Ben Hogan won the Master's and the U.S. Open, he knows the flying speed of the elusive brandt and he knows the aerobic power of the wily steelhead but at the same time he also knows just about all there is to know about bio-engineering, photovoltaic cells, robotics, micro-electronics and magnetohydrodynamics. As I have said, he went to high school when he was eleven years old—at that time his I.Q. was clocked at 184—and he graduated from law school a full year before he was old enough to sit for the Bar Examination. He is a brilliant controversialist but is, by instinct, a peacemaker, conciliator and harmonizer. One of the rules by which he lives is "Hurt no man. Then do as you please." He has an original mind which is at the constant service of a sly and enduring sense of humor. He seems, like Sabatini's Scaramouche, to have been "born with the gift of laughter and the sense that the world was mad." He speaks five languages—six if you count Confederate. He is a participant in and a patron of the arts. He is a piano player (he led a dance orchestra to help pay his way

through college) but "hasn't played in a hundred years" and claims to think Eddie Duchin is still playing at the Plaza in New York. A beer or a drink has a life expectancy of two hours in his hands. He is smooth to the point of deadly perfection and a Federal Judge before whom he used to practice told me at an ABA meeting that quite often a witness would leave the stand after being cross examined by Eddie thinking "He didn't lay a glove on me" and then on the way back to his seat, just that slight movement would cause "his head to roll off his shoulders to the floor, Eddie have cut him clean through." He is, then, complex, calm, courtly, conscientious, cosmopolitan and clinical and all of these welded into his drive, his willingness to experiment, his vision and his energy have added up to making the Washington State Bar Association the very best. His calculated desire and courage to take a chance, to try something new and different, to develop new programs, to explore new ideas, and new ways to do things have allowed us to grow here and to develop and to move ahead in a hundred ways and in every one of our activities. He has provided not only the inspiration and his own hard work looking toward the attainment of objectives but he also had us always reaching just a little further and growing to put us at the front of our profession. He is a man who can organize and persuade and he knows how to get folks to doing things together from their own volition and interest and he has demonstrated an ability to rekindle every flickering enthusiasm with his glowing perceptions of what vision and effort can bring. He has said in his speeches from Anacortes to Walla Walla that, "Our system of justice is not self executing" and that the lawyers must make it work and to make it work for the good of every citizen. He is totally committed to our judicial system and to the society for which it exists. He wins because he invented the very effective strategy of never accepting defeat. His family crest bears the motto, "Suaviter in modo, fortiter in re" which translates to "Gently in manner, strongly in deed."

Eddie is an avid and active sportsman—he is a player. Baseball, football, golf, hunting, fishing, croquet—if it is competitive and has a challenge he knows it and is in on it. He also makes it an exquisite pleasure for those fortunate enough to participate with him. Even though he is a man of dubious talent on the golf course, top touring professionals like Peter Jacobsen and scratch golfers all over the world would rather play with him than anybody else they know. He is a real competitor and when needed or called upon he can coax a forty foot putt into the hole as if up to then he had been holding back for the arrival of the moment. As a hunter, I have always suspected that he was at least 90% on the side of the birds and that it was only now and then that he tried to make some

contribution toward getting the limit of the day.

Eddie's list of friends, both past and present—from John Kennedy to Bob Newhart, to Patricia Neal to Rick Honeycutt to Captain Kangaroo to the operator of the shoe shine stand at the Palmer House in Chicago—are legion and legend—and he values them equally and treats them all the same. He knows Princes and Potentates all over the world but he also knows butchers (the Kastner Brothers in Ballard), Bakers (Howard) and candlestick makers (Tiffany's). He is, though, a private person to the ultimate and all of his friends and associates agree that no one person sees all the sides of him or plumbs much further than the surface of the real depth. He is like a prism and how you see him depends totally on the perspective from which you take the look. He has said to me that there is positively at least one thing worse than being alone and that is wishing that you were. History teaches us that the punishment, indeed the price, for exceptional talent and intelligence is the indisputable fact of solitude. But history teaches also that being alone is quite different from being lonely. Eddie understands that far better than anyone I have ever known. He does not suffer fools gladly and when cornered at a cocktail party or by a seatmate on an airplane has been known to represent himself to be either "the regional sales manager for Preparation H" or "an advance man for balloon ascensions." Along this same line, he was a decorated combat naval officer in World War II—participated in the landings at Anzio, flew bombing missions over Ploesti, was on special assignment with the ground troops at Monte Casino in Italy and directed the air traffic in the invasion of Southern France where his ship took a hit suffering heavy casualties—and yet in any discussion of his military career he limits himself to his brief stops at such glamorous spots as Hollywood Beach, Florida, and the Monterey Peninsula in California. In like manner and as a part of this same kind of put on, he is careful at all times to conceal his extensive knowledge of wines, fine music and the other gentle arts. The point here is that it is a waste of time to try to understand him—you will be doomed to failure and it will only detract from the time you have to just enjoy the phenomena. Trying to figure him out will drive you up the wall and all you will get out of it is a bump on the head from the ceiling.

I asked Eddie recently if he ever felt that he had wasted the ten years that he has been with us. He was obviously distressed at the question and made it very plain that he felt he could not possibly have made better use of himself than to have been at his work here. Later, on reflection, I realized how ridiculous the question was—because in truth I suspect that during this same ten years he has concurrently under one name or another written a couple of books, got elected to political office in Connecticut,

staged the wedding of Prince Charles, been to the moon two or three times, conceived and organized the Solidarity Party and for the last three years hit .365 for Nuevo Laredo in the Mexican League! He sleeps only 3 or 4 hours per night (and sometimes those are between 7 and 10 p.m.) and who knows what he does or where he goes or even who he is for all those other extra hours?

There is no such thing as saying goodbye to Eddie Friar. For one thing, he won't let you. He will change the subject or just disappear. This is partly because in truth inside his chest beats a great big old Valentine and partly because in every sense he is as real as a warranty deed or a water meter and at the same time he is sensitive and emotional in truth and in spirit to the outer limits of the human endurance. Those who know him love him too much and those who do not love him, do not know him at all.

Whatever fortunate wind then brought him our way, he has been invigorating, enthusiastic, constructive, productive and superbly competent. He has given us vision, integrity, understanding, harmony, endless hours of hard work, leadership, stature, panache, prestige and honor. He has made us better—not just better than we were, not just better than anybody else but better than we thought we could be. It is impossible for him to ever really leave us, he has stamped too much of himself

and his standards and his boundless energy and his consuming passion for the profession and the public which the profession serves for us ever to wander far from his steady hand, strong heart, incisive mind and warm charm. So this is by no means goodbye. He wouldn't like that. But maybe, Eddie, just one neat wet spot and then we will turn the page.

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Too Much Hypocrisy

by C. Thomas Moser

*"Democracy substitutes election by the incompetent
many for appointment by the corrupt few."
... George Bernard Shaw*

Land-use planning at the local level, and the development of a comprehensive body of law in the area of planning, has come of age in Washington State. However, the July, 1980, issue of the *Washington State Bar News* contained a feature article entitled "Too Much Democracy" (a contradiction in terms), which set planning law back fifty years and demands a response in this journal, if for no other reason than to assure ourselves and the public that our respect for democracy and ordered liberty has not diminished.

The dual thrust of the article written by Michael W. Herb is that projects and developments are being delayed by citizen involvement in the decision-making process, and that appointed boards should be substituted for local elected officials. This response acknowledges delay in development proposals, but asserts that such delay cannot cause a retreat from the established democratic planning process developed over many years in this State. A full understanding of these delays must rest upon the merits of each development proposal rather than reliance

upon the simple proposition that citizen participation in the planning process has fouled the system.

This response will also examine the current status of the law and review recent trends in local government in response to court decisions. Finally, this response will propose modifications to the law which will serve to enhance the democratic process and reduce the hypocrisy of the debate currently surrounding the decision-making forum.

Public Hearing Process

The Washington Planning Enabling Act, Chapter 36.70 RCW, was enacted in 1963 to allow for local regulation of development with ultimate authority vested in local elected officials who must respond to the voters on a periodic basis. Chapter 35A.63 is similar authority for cities. The public hearing concept is central to the statutory planning scheme.

A careful inspection of the public hearing process, which Mr. Herb believes has brought development to a "standstill," necessarily includes a review of the appearance of fairness doctrine. The duty to conduct a public hearing is one imposed by statute and springs from the concept that planning is a public function. Gone are the days of "expert planners" who design our living environment based upon criteria unrelated to publicly expressed needs and desires. The general public is invited, under the statute, to participate in the decision-making process and be heard—much like a town hall meeting. The ultimate decision is made by elected officials who, hopefully, reflect the community and respond to the expressed desires of the public in a fair and open manner. We should not be disturbed by such a fundamental precept of our democracy.

The first decision in Washington on the appearance of fairness doctrine is from the 1969 Skagit County case of *Smith v. Skagit County*, 75 Wn.2d 715 (1969):



C. Thomas Moser is the Skagit County Prosecuting Attorney and chairman of the Land-Use and Environment Legislative Committee, Washington Association of Prosecuting Attorneys. He is a 1976 graduate of Gonzaga University Law School.

"It is axiomatic that, whenever the law requires a hearing of any sort as a condition precedent to the power to proceed, it means a fair hearing, a hearing not only fair in substance, but fair in appearance as well. A public hearing, if the public is entitled by law to participate, means then a fair and impartial hearing." P. 739.

The court went on to cite foreign law as authority for this newly-created doctrine. The opinion reached into new frontiers of the law, offered a definition of the term "public hearing," offered a "test of fairness" for the new doctrine and tackled the distinctions among "legislative," "judicial," "administrative," and "quasi-judicial" functions. The majority held the planning process to be legislative in nature, while the dissent held it to be quasi-judicial (a view later adopted in *Chrobuck v. Snohomish County*, 78 Wn.2d 858 (1971)).

The new doctrine swiftly moved from the narrow fact pattern found in Skagit County to other areas of the state and forums other than land-use decisions. In *Chrobuck*, *supra*, the court held that prejudgment announced by members of the planning commission and board of commissioners violated the opposition citizens' right to a due process fair hearing under the newly created appearance of fairness doctrine.

In *Buell v. Bremerton*, 80 Wn.2d 518 (1972), the court found that ownership of adjacent land by a planning commission member which might increase in value by the proposed rezone, violated the appearance of fairness doctrine. The Supreme Court reversed the lower court ruling which had affirmed the City of Bremerton in the rezone action.

The same year *Buell* was decided, two other Supreme Court decisions on the doctrine were issued. In *Fleming v. Tacoma*, 81 Wn.2d 292 (1972), the court affirmed a trial court reversal of a city council zoning reclassification ordinance, holding that actions of a city councilman *after* the decision was made violated the doctrine. The councilman acted as attorney for the land developer less than 48 hours after the final vote.

"The proceedings in which the questioned zoning amendment was enacted is permeated with an appearance of unfairness by Councilman Murtland's conduct. We therefore hold that the ordinance is invalid, notwithstanding that Councilman Murtland's vote was unnecessary for passage." P. 300.

In *Anderson v. Island County*, 81 Wn.2d 312 (1972), the court reversed a trial court ruling which affirmed a rezone ordinance passed by the board of commissioners, holding that the board not only violated the doctrine, but acted arbitrarily and capriciously. The chairman of the board was the former owner of the applicant company and made statements expressing his personal opinion

favoring granting of the application before full public testimony had been received.

The courts have been called upon to assert the appearance of fairness doctrine where financial interest may be affected by the decision. The financial interest need not be direct or obvious and, in fact, need not personally affect the offending decision maker. *Narrowsview v. Tacoma*, 84 Wn.2d 416 (1974); *Swift v. Island County*, 87 Wn.2d 348 (1976).

The court has not limited application of the appearance doctrine to land-use cases and local government. The Washington State Human Rights Commission was held accountable to the doctrine in *Milwaukee R. R. v. Human Rights Commission*, 87 Wn.2d 802 (1976). The Board of Industrial Insurance Appeals was subject to the doctrine, though the final decision was allowed to stand, in *Hill v. Labor and Industries*, 90 Wn.2d 276 (1978). The courts have also applied the doctrine to medical disciplinary proceedings in *Medical Disciplinary Board v. Johnson*, 29 Wn. App. 613 (1981) and *Stockwell v. State Chiropractic Disciplinary Board*, 28 Wn. App. 295 (1981).

A review of these decisions makes it clear that the delay in development, decried by Mr. Herb, is, in part, the product of judicial review rather than the politicians who make initial decisions. Mr. Herb argues that "[A]n endless list of proposals are at a halt, not because of the



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lack of merit of the proposals, but because of local politics." This argument fails to recognize the impact of judicial review and the attending delay of litigation caused by procedural error. To blame local politicians for delay is to blame those caught in the middle. Some delay is necessary to ensure an opportunity to be heard and to seek court enforcement of the rights of proponents and opponents. As all lawyers realize, litigation is the price of a free and democratic society.

Quasi-Judicial Duties

Fundamental to the appearance of fairness doctrine is an understanding of the quasi-judicial nature of the decision-making body. Mr. Herb argues that the legal status of elected officials as quasi-judges is the cause of the system malfunction, i.e., "Too Much Democracy." Mr. Herb argues that "[l]and use controls make sense and are workable. It is the quasi-judicial hearing point, to the extent elected officials preside, where the system is seriously flawed." Mr. Herb would have the quasi-judges be appointed rather than face the electorate on a periodic basis. If the system presently favors fair hearings and clear response to the voters, one has to wonder if the problem is not really democracy working too well, rather than too much democracy.

The court has struggled with the nature of land-use

decisions for a number of years. The initial theory expressed in *Lillions v. Gibbs*, 47 Wn.2d 629 (1955) was that the board of county commissioners acting pursuant to a statute relating to zoning is a legislative body exercising legislative power. That view was later abandoned in favor of the theory that the decision-making body, whether planning commission, board of commissioners, or city council, is quasi-judicial in nature. *Chrobuck v. Snohomish County*, 78 Wn.2d 858 (1971); *Fleming v. Tacoma*, 81 Wn.2d 292 (1972). Simply stated, the decision maker in a quasi-judicial forum is required to act as a judge and conduct the hearing in the manner expected of a judge.

The standard of conduct expected of a quasi-judicial officer is rather rigid when contrasted with that of a legislator. In a lengthy discussion on the responsibility of a quasi-judge, the Supreme Court held hearing officers of the Human Rights Commission to the highest standards.

"Since the hearing tribunal was, at the least, performing in a quasi-judicial capacity, there is no reason that the same common-law rules of disqualification applicable to judges should not apply." *Milwaukee v. Human Rights Commission*, *supra*, at P. 807.

The court went on to say:

"Our system of jurisprudence also demands that in addition to impartiality, disinterestedness, and fairness on the part of the judge, there must be no question or suspicion as to the integrity and fairness of the system, i.e., 'justice must satisfy the appearance of justice.'" P. 808.

It is this standard which local officials face when sitting in the land-use forum. The standard is not too high; it is the lack of definition which causes problems for the legislative body and the public.

Legislative Action

The response to the constraints of the appearance of fairness doctrine has been dramatic and troublesome. The positive aspects are reflected in the reported appellate decisions. The negative aspects are purely subjective and are worth careful consideration by our profession.

Many land-use decisions currently being made by our elected and appointed officials are the product of fair hearings tediously groomed by the doctrine. Public attorneys who advise these decision makers must focus daily attention on the mandates and perceived mandates of the doctrine to avoid error during the public hearing process. Because the scope of the doctrine is largely undefined, these public lawyers are cautious in advising the decision maker and give conservative opinions rather than face a court challenge to the public hearing procedure.



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In response to the negative impacts of the doctrine, the 1981 Legislature passed House Bill 697, entitled "An Act Relating to Petitioning Local Government Officials," which virtually abrogated the doctrine. The bill was the target of a Governor's veto message which read, in part, as follows:

"This bill would eliminate, for all practical purposes, the 'appearance of fairness doctrine' with respect to deliberations of local legislative bodies. This doctrine has served a useful purpose in this state and has helped establish public confidence in the actions of local officials."

Section One of the bill simply established the proposition that "The right to petition executive officials or members of legislative bodies of counties, cities, and towns shall not be limited by application of the appearance of fairness common law doctrine." What is obvious is that the Legislature felt the doctrine is becoming a tool to separate local officials from the electorate. It is difficult to deny such conclusions.

Local officials are caught in the squeeze between the demands of the public to be accessible (while serving as legislators) and the simultaneous requirements imposed by the court to function as quasi-judicial officers. The roles often conflict and the public is frustrated. The public official finds that while land-use matters are pending, they must turn away citizens who approach them at the office, home or socially, concerning separate or entirely unrelated matters in an effort to maintain an appearance of fairness to outside observers. Thus, the legislative language of HB 697 attempting to reinforce the right of a citizen to approach local officials.

A second impact resulting from the doctrine is the creation of hearing examiners; RCW 36.70.970 and RCW 35A.63.170. Many local governments have been forced, for multiple reasons, to appoint persons to function in the land-use process, serving as decision makers, and conduct public hearings. This shift in authority and responsibility to bureaucrats serves to place the appearance of fairness burden on non-elected shoulders and removes, by degrees, the democratic process from the public. The hearing examiner is not directly or indirectly (depending on local employment regulations and contracts) responsible to the public and is less likely to be concerned with citizen input. This appointed examiner is a step removed from the public and the public hearing conducted before the examiner may have the appearance of fairness though it is less meaningful for the public. The cause of democracy is not well served by this trend toward bureaucratic decision makers in land-use matters. The trend will continue unless steps are taken to define and clarify the present appearance of fairness doctrine. Local officials should be constantly fearful of exercising legislative authority

simply because of pending land-use decisions. It is clear the Legislature intends to take steps to resolve this problem at the next session.

Appearance of Fairness Act

It is expected that the 1982 Legislature will respond to the Governor's veto of HB 697. A modification of the bill can be expected in an effort to compromise with the Governor and provide needed relief for local officials. There is a feeling that the doctrine needs to be clearly stated and parameters established as guidelines or standards of conduct for local officials. There are at least three areas of concern which appear ripe for legislative action and would serve to clarify the doctrine without doing violence to its purpose. The House Local Government Committee is currently addressing these needs and is holding legislative hearings on the impacts of the doctrine.

Right of Petition: The Legislature has expressed concern, by passage of HB 697, that the right of citizens to petition elected local officials is adversely affected by the doctrine. The right of petition is guaranteed by Article I, Section 4, of the Washington State Constitution and the First Amendment to the United States Constitution. It has been argued that the right to petition also includes the right to contribute to political candi-



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dates and the right of candidates to receive contributions. *Fritz v. Gorton*, 83 Wn.2d 275 (1974); *Young Americans v. Gorton*, 83 Wn.2d 728 (1974). The doctrine obviously limits the ability of some citizens to make political contributions during certain periods of time to certain candidates. For example, a developer would be ill-advised to contribute to an incumbent county commissioner while the developer's land-use application is pending before the Board of Commissioners.

The difficult problem facing elected officials, citizens and public attorneys is in determining when the doctrine applies under various conditions; does a ten dollar contribution made ten years ago prohibit an elected official from rendering a decision on the contributor's application today? Is it the law that once touched, forever blemished? Does an intervening election cure the problem under the doctrine? Does a contribution made after the land-use decision violate the doctrine? It would appear that these issues are best resolved or clarified legislatively, rather than through continued and lengthy litigation. Possibly the Legislature will set guidelines for determining what conduct in the area of contributions violates the appearance of fairness test, so that these questions do not continue to plague local officials and citizens.

The California Supreme Court has addressed this issue in a recent case interpreting the fair hearing requirement of the California Code of Civil Procedure. In *Woodland Hills Residents v. City Council*, 164 Cal. Rptr. 255, 609 P.2d 1029 (1980) the court held that an expression of political support by campaign contribution does not prevent a fair hearing before a city council. The court held that the campaign contribution by the developer was "an exercise of fundamental freedom protected by the First Amendment to the United States Constitution and Article I, Section 2 of the California Constitution."

Campaign Statements: The American Tradition of political campaigning has centered around the idea of "campaign promises" made to the electorate. Politicians are asked to take positions on various issues of concern to the voters in their community. It is largely unacceptable for a candidate to refuse to take a position or make no comment. Yet, the doctrine virtually demands that politicians refrain from taking positions on certain issues.

We have recently witnessed the active participation of the community in local land-use planning and development. Local politicians are expected to reflect community values and desires on land management and growth. Voters question candidates for office on their positions concerning growth and economic development. A substantial development proposal which may be pending during a political campaign is certain to be the focus of debate and rhetoric. Some communities have, in

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recent campaigns, experienced the frustration of being told by candidates that they are unable to comment on these topics for fear of violating the doctrine. A legislative strategy should be established to allow comment of some nature during campaigns that would not violate the doctrine, but would inform the voters of the political philosophy or position of candidates on pressing public issues.

Doctrine of Necessity: The doctrine or rule of necessity is a recognized exception to the rule that legally biased quasi-judicial officials must be disqualified from participation in a proceeding. The Doctrine of Necessity is a mitigating theory of law which is triggered by the loss of a quorum or the inability to reach a decision by the majority of the whole because of the appearance of fairness doctrine. The doctrine of necessity allows the disqualified decision maker(s) to participate in the proceedings as an alternative to forfeiture of the proceedings.

The Washington Supreme Court adopted the doctrine of necessity in *Kennett v. Levine*, 50 Wn.2d 212 (1957):

"It is established by the great weight of authority that where a public officer, or an administrative board, or a legislative body—such as the city council—is given exclusive jurisdiction to conduct a hearing and determine whether an individual should or should not be removed from office, and no alternative or substitute is provided, disqualification will not be permitted to destroy the only tribunal with power in the premises. This is known as the doctrine or rule of necessity." P. 219.

That case involved the attempt by the mayor to remove a member of the Seattle Transit Commission for conflict of interest. The city charter permitted such removal only with confirmation of the city council. The Transit Commissioner challenged a majority of the city council for prejudice. If the allegedly prejudiced member of the council had been disqualified, there would have been no tribunal with legal authority to review the dismissal.

This recognized doctrine has not been extended by any appellate court decisions to land-use forums. The Legislature could recognize the doctrine of necessity and make it clearly applicable to land-use matters, thus preventing continued litigation on that issue of law.

Conclusion

It would appear from reading Mr. Herb's article that the system is working properly, though not to his liking. It is not the force of democracy that has halted development proposals as argued by Mr. Herb. Democracy and the permit review system have allowed a thorough review of the merits of these proposals, and the public has fully participated in the process. A retreat from

existing and fundamental principals at this date will greatly damage confidence in local government, reduce citizen participation and ensure suspect decisions.

The Legislature can do much to improve and define the existing appearance of fairness doctrine. It is hoped that creative and progressive legislation will be adopted at the next legislative session to clarify the parameters of conduct expected of local officials and participating citizens. □

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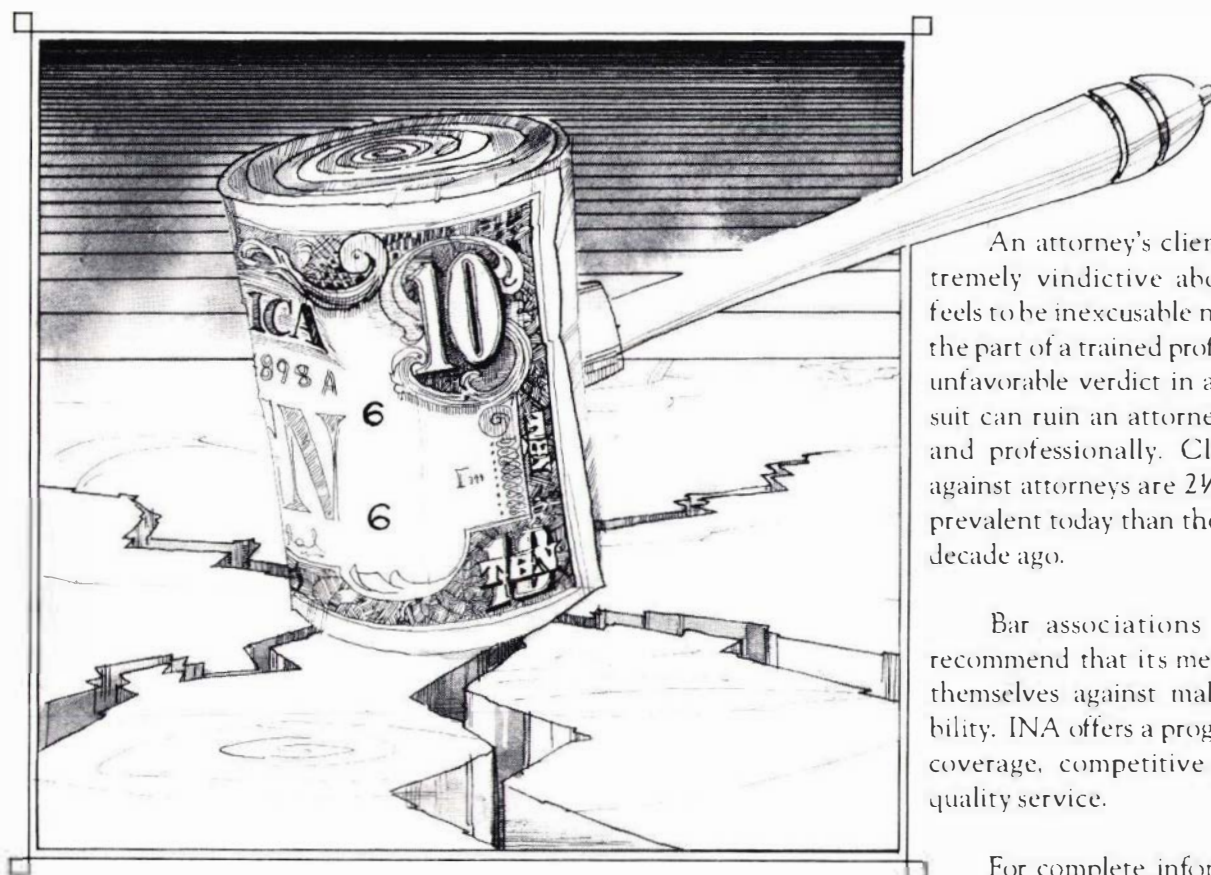
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The Future and Legal Education:

A Professor's View

by Arval A. Morris

Judged solely from the perspective of an outside observer and using only external criteria, one would say that legal education in the United States has been a crowning success in the last quarter century. It is nearly as healthy today as it ever has been; however, it is suffering from inflation. There are more law schools, and they command considerable resources, although significantly less than five years ago. The law faculties are better and bigger than they were 25 or 50 years ago, and there are more and better students. It no longer is true, as it was 50 years ago, that almost all the great law schools are huddled together in the East. Today, excellent law schools are found in every region across our country.

The law curriculum has changed and improved too. Nevertheless and properly, the curriculum still reflects the traditional faculty belief that tomorrow's law graduates must have a solid foundation in the basic skills of legal analysis and legal reasoning. A critical understanding of key legal institutions and their fundamental concepts—that is, a substantive and procedural map of the legal universe—is also judged crucially necessary. Additionally, law graduates should be knowledgeable and intellectually curious people with broad perspectives about the opportunities and limitations of life's experiences in organized communities. The intellectual stimulation of legal scholarship fosters curious, open-minded and inspired professionals. Moreover, legal education should help develop a student's capacities to learn on his own and to deal confidently with a range of professionals who claim expertise in the solution of society's problems. To achieve these ends, the law curriculum has become more intellectual and has expanded in the last 25 years to include dimensions of philosophy, economics, history, psychology, sociology, statistics and technology wherever they touch on law. This change is based on the recognition that law, a practical art, connects with every

human endeavor in an organized society and that, to achieve its ends, legal education must necessarily embrace practical parts of other disciplines. Handling expert witnesses, dealing with government regulators, negotiating in the corridors of power, amassing and using data, understanding and manipulating the operations of public and private bureaucratic institutions—these skills lie at the core of much of the work of the modern lawyer who also continues to exercise the more traditional arts of drafting wills, contracts, divorce arrangements, deeds and pleadings. Broadly-based skills training, an expanded intellectual horizon, and an emphasis on lawyer adaptation to differing professional roles are thoroughly incorporated in the modern curriculum.

The law curriculum has also reached out more and more to the legal profession, and has become significantly more practice-oriented. Attempts are made to introduce students to the "law-in-action" by comparing the day-to-day operations of a legal institution to its theoretical statement. Today, law schools teach many more skills than case analysis, although heavy stress continues on developing analytical abilities, clear concepts and basic theory. Interviewing, fact-gathering, counseling, drafting and litigating have all been incorporated into the modern curriculum. These skills, along with sets of courses labelled "Clinical Education," demonstrate the outreach of law schools to law practice. Vocationally-oriented conceptions of legal skills plus their attitudes and information can provide a dynamism and an immediate reality for a lively exploration of issues of professional responsibility.

The great strength of legal education at a university is that it is based upon a dual foundation—its major support is securely anchored in the academy while its other support is found in the practice. A firm commitment to the creation and communication of new insights

This article was prepared and written before Governor John Spellman declared a financial crisis and before the U.W. Board of Regents declared a financial emergency because of a \$33 million deficit.

Professor Arvil Morris teaches Constitutional Law and Jurisprudence at the University of Washington. He has received legal degrees from Colorado College and Yale University.

into law and its institutions flows from its academic orientation in a university setting. A firm commitment to the highest professional education—insight into public life plus the development of skills, judgment and values characterizing the very best lawyers—flows from an intellectually-based law practice orientation. Yes, seen solely from the outside, the American law school appears as one of the many success stories of the third quarter of the 20th Century.

The law school at the University of Washington exemplifies this period. Its changed curriculum now reflects all the modifications and improvements. Although the quality of any faculty rests, ultimately, on the excellence of the production of gifted individuals, not merely on their numbers, it is worthy to note that in 1955, the University of Washington had a faculty of eighteen, but today there are forty—and with a considerably stronger national and international reputation. Ten national casebooks currently used in this nation's law schools have been produced. Recently, the University of Washington's law faculty supplied visiting professors to Harvard, Michigan, Stanford, N.Y.U., Pennsylvania, U.C.L.A., Hastings, Iowa, Vanderbilt, Texas and to law schools in foreign countries. Excellent teaching and the flow of treatises, books and articles continues unabated. The last 25 years have seen the student body change too. In 1955, there was no selective

admissions system, and anyone with a degree was admitted to law study. Today, the law school's admission system is highly selective, and, judged by undergraduate grade points and Law School Admissions Test scores, the University of Washington's law students, according to Dean Schatzki, rank about sixth in the nation with a median LSAT of 693 and a median GPA of 3.57.

Seen from the outside, American legal education appears successful and secure. But, appearances can be deceptive. Internally, legal education, like America itself, is uncertain about its present and puzzled about its future. There is little doubt that teaching will remain adequate given the current faculty commitment to that task and the high quality of that effort. But, there is significant doubt about the job law schools should be doing and whether they are doing a complete job of preparing prospective lawyers. Discussions are heard wherever one finds groups of law professors alone: "What are the attributes of a really good lawyer today, and will they still be good attributes about 40 years from today (in say, 2022), which is the average span of a professional life?" "How should a curriculum be structured so as to impart a solid foundation in the basic legal skills yet remain serviceable in basic knowledge 20 or 40 years from today?" "What can we teach best in an educational setting, and what should realistically be left

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for the apprenticeship experience during the beginning years of law practice?" "How best can law schools achieve their goal of preparing students for the practice yet still engage in substantial research producing new knowledge about law and legal institutions which keeps their focus from collapsing into a pure and provincial vocationalism?" Pondering these questions brings to light one critical fact: American society, itself, today, is caught up in the turmoil of dynamic change. Thus, clear and precise answers for law schools will not be had until after the determinants of change producing our emerging new social order are understood. Law, after all, is not a discipline isolated unto itself, but a practical art that touches every field of human endeavor and changes as society changes. Today, that change is both molar and molecular.

Fundamental social change is not, of course, an absolutely new phenomenon. The cliché is that on departure from the Garden of Eden, Adam told Eve they were living through a period of transition! Social change seems to be the result of societal incorporation of clusters of basic technological innovation roughly simultaneously. That incorporation wrenches society into a new pattern of social and financial relations which are of obvious importance to the law. The most well-known social upheaval, the so-called Industrial Revolution, ran from the 1780's to 1842. It was founded on Abraham Darby's discovery of methods to smelt iron ore with coal and on the mechanization of the Lancashire cotton industry. The locus of the Industrial Revolution was England which gained world leadership from it. A second period of major change occurred from 1842 to 1897. This was the age of steam, the development of railways and the Bessemer steel process. This time England had to share part of its position of world power with the United States and Germany. A third social upheaval began in 1898 and lasted until the beginning of World War II. It was based on electrification, chemicals and cars. Now, world power had passed from England to the United States, although Germany remained important. Each of these three periods produced cataclysmic changes in social and legal relations. Useful vestiges from previous periods continued, and others, e.g., widespread use of smelters and horse-drawn carriages, disappeared. Law schools created new courses and faculty research focused on the new problems. Each period involved a long climb up from a depression to robust expansion on a prosperous plateau followed by a slide into recession or depression. Each period began its upswing after an exceptional cluster of new inventions had been incorporated into the economy. And each period confronted the law, and America's law schools, with unprecedented new legal problems.

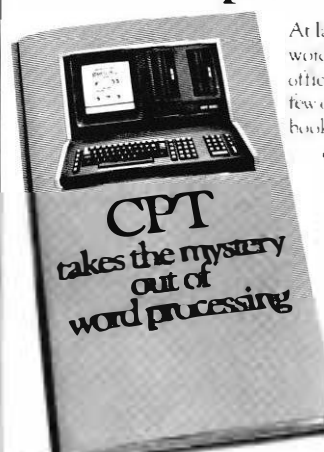
Today, it is widely believed, we live at the end of a period that began immediately after World War II. The

American and the world economies steadily expanded from 1945 onward, but began a descent into recession during the late 1970's. This period was fundamentally based on aircraft, aerospace, weaponry of all kinds and computers, as well as a broad range of new service industries—all of which generated challenging and new legal problems. The power center of this period, unquestionably, was the United States, with Japan playing a progressively more important role in later years. It is over.

The questions people are asking are what will be the basic, new determinants of the next social order and where will its center be, because as a nation becomes the successful incorporator of innovation so does it become the world's economic leader. The belief is that the new period should start to gel about 1985 or so. Experts generally agree on some of the newly emerging high-technology industries that will form the backbone of the next stage of development. One of the emerging industries focuses on the microprocessor, and the vast range of machines and capabilities it will continue to spawn. Silicon valley will prosper. Another emerging major industry is genetic engineering and all of its awesome potential. A third revolution is in communications. Based on direct satellite reception and fiber optic technology, it is just getting underway—witness, for example, the struggle for control over cable-TV. This

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revolution will become quite apparent by 1990, or earlier. A fourth emerging industry is organized around a search of new ways of tapping raw materials, especially those found in oceans. It places a separate and particular emphasis on tapping raw materials that supply energy. These four emerging industries, plus, perhaps, one or two more, promise to provide the framework for our next stage of development. It will materially affect human relations—and the law.

As best as they can, law schools must prepare students today for the next forty years of professional life. No one is sufficiently omniscient to predict the precise nature of the legal problems that law graduates will have to cope with during their professional lives. But, we have some appreciation of the contours of the emerging industries and their problems, and they will help determine our next stage of development, just as astute, long-headed law professors forty years ago had some appreciation that today's lawyers would be working with some aspect of unions, pension reform, employment and other discrimination, occupation health and safety, environmental regulation, energy conservation and bureaucratic malaise. A lawyer's education neither begins nor ends with the law school. Law school builds on what came before. If previous education was solidly based and done well, we should have people capable of continuing to learn throughout their professional careers. Well-educated people with vigorous and humanistically oriented intellects can imaginatively adapt the precedential wisdom and practice of the past to today's emerging problems in better ways so long as law schools do their part to prepare them for the next forty years of professional practice. And, there's the rub. It means that in addition to the time-proven skills of legal analysis and reasoning, students must be introduced rigorously to substantive areas and problems that today can only be dimly foreseen. In dealing with issues at the knife-edge of social change, the well-educated law graduate needs all of his analytical skills plus all of the knowledge of our impending future that we can muster and transmit. He also needs a profound knowledge of our shared values and of wisdom found in mankind's humanistic tradition.

The founders of America intended that we manage our way by acts of will, whether in periods of social change leading to a new paradigm of social relationships or in a period of quiescence involving its further elaboration. America's founders intended that we do this while maintaining, and expanding, competing as well as complementary freedoms considered in the interests of creating a civilized civil state and a free and generous people. That is not impossibly high idealism. Our most native handicraft and America's most valuable, practical and durable product is its high idealism. It is everyone's personal obligation to honor it, but especially, it is the obligation of the guardians of the law to implement it in

new situations while maintaining it in traditional ones. We cannot permit our newly emerging social order to fall into vulgarity or disconnected fragments by scorning the call of our collective idealism, or by ignoring its imperatives. Every citizen, and especially lawyers, must remember that the promise of our history lives in each of us as a sacred trust. That legacy urges us all to liberality of spirit and a decent social order. America's high idealism is a great and precious gift, and by honoring it, we will safely lay a wide foundation for the next stage of our human relationships. The true intellectual and professional promise of precisely-educated law students lies in their possession of this sense of purpose and vision that encompasses character, motivation, and, yes—virtue, as well as analytically reasoning minds.

Lawyers of this caliber are what society needs, and needs now. It is the overriding objective of university-based law schools to produce them. But, ominous signs are on the horizon. Of several forces now gathering momentum, two of them—one mediate and internal, and the other one immediate, external and more important—threaten to impair the ability of America's law schools to achieve their mission.

The Internal Threat

The internal threat to legal education is a possibility not an actuality, albeit a growing possibility. It is rooted in the changing demand for legal education and the law schools' collective response to it.

The closing of opportunities in other disciplines has seen the enrollment in America's law schools climb steadily upwards since 1964 when 54,265 students were studying law, by 1970 enrollment was 82,499 and by 1980 it was about 125,000. The total number of women entering law school continues to increase, but the total number of incoming men peaked in 1971 and had fallen by 4,618 in 1979—a 14.5% decrease. During that time overall enrollment increased by 28,333 or 30%. The level of admissions nearly doubled between 1970 and 1975. Approximately 40,000 women and 85,000 men, including 10,500 minority students, were studying law in 1980. This enrollment has had an impact on the Bar. During the decade of the 70's, the American Bar swelled from 304,938 lawyers in 1970 to approximately 518,000 in 1980 (610,000 are expected by 1984, and 750,000 by the end of the 80's). Washington's Bar has had a similar experience increasing dramatically from about 2,500 lawyers in 1955 to about 4,000 in 1970, and to about 10,000 today. The point is obvious enough; the success of America's law schools during the last 25 years was essentially tied into a condition of rising demand and continuing expansion, which also characterized America's economy. But, this period is ending.

Although inaccuracy due to so many nonquantifiable factors is the best characterization of long-range enroll-

ment projections for higher-education, some prediction is possible. Two prime predictions are that it is most likely that overall demand for legal education will decrease during the 1980's and that its impact will be felt unevenly by individual law schools. Just as universities obtain the bulk of their students from the 18-year-old age group, law schools obtain the overwhelming bulk of their students from the 22-year-old age group. The immediate future population figures are firm. They indicate that the number of 22-year-olds in the United States will peak in 1983 and decrease thereafter for the balance of the decade, decreasing by approximately 18% across the nation between 1983 and 1990. Moreover, although it is a "soft" projection but "firmer" than predictions about college graduation, the number of persons expected to graduate from high school is projected to fall 15% by 1985, from a peak in 1978. In Washington, for example, the projected change in 22-year-olds from 1979 to 1989 is a decrease of approximately 20%. On the other hand Alaska is projecting an increase of 36% and Idaho an increase of 6%, while declines will occur in California 16%, Oregon 9%, Michigan 20% and Illinois 24%.

The demand for legal education is influenced by factors other than population; e.g., the state of the economy, the opportunities in law practice, the percentage of the college-age group earning degrees, etc. Whatever the impact of factors other than a decline in the 22-year-old age group, experts agree that total demand for legal education will decline after 1983. At that time the struggle for students, and hence survival, among law schools will begin. Since the decline of 22-year-olds will vary markedly in different parts of the country, it will have an uneven impact on law schools. For example, if a significant number of 22-year-olds from Alaska, Idaho and from other states expecting an increase of this age group, were to select Washington's law schools, then Washington's 20% decline in 22-year-olds could be offset. If so, the demand for legal education in Washington could remain constant, assuming that the same general proportion of 22-year-olds continued to select law for their careers. It is possible that the demand for legal education at the University of Washington will not suffer greatly.

A prospective decline in law students coupled with an oversupply of law schools provides conditions for the rise of fierce law school competition and for a powerful movement—active student consumerism. A decline in the quality of legal education could ensue. If institutions compete frantically for students, then faculty members, and especially administrators, may become hesitant to make fully rigorous and consistent demands on students for fear of losing them, either from a faculty member's course or from the law school itself. Students may become courted customers, especially by schools dependent on tuition for survival but also by state-supported

law schools subject to funding formulas based on student-body numbers. Law deans threatened with a loss of students, and hence budget, are particularly vulnerable to student demands for changes such as the instituting of a pass/fail grading system for some or all courses where a "D" equals a pass, implementing an honor system where no one is obligated to inform authorities on seeing another person cheat (one's own personal education is all that really counts—an extension of the "me" generation), granting full academic credit for performance of significantly lesser intellectual tasks like clerking in a lawyer's or legislator's office (experiencing the "real" world), eliminating seminar and writing requirements (too rigorously intellectual) and attendance requirements (law students know best how to use their time), and excluding failing grades from appearing on transcripts (the embarrassments of failure must be suppressed at all costs). Law students already are notorious for choosing courses, at least in part, on the basis of their degree of rigor and amount of work involved.

In such circumstances faculty morale will turn sharply downward because market forces now dictate changes in the curriculum and in the modes of instruction. Just when legal innovation is needed most, faculty members would limit experimentation and focus on the traditional fields of scholarship where there is safety. The tendency would be to appoint new faculty members whose interests are

central to the law school's curriculum when what we need today are people who have the ability to slide across disciplinary boundaries. At its worst, a steep decline in student enrollment would permit student power activists to play off faculty members and law schools from considerable strength. A competitive Hobbesian war could set all against all with and among law schools—faculty members and law schools would now compete to capture the student market on which their reputations and opportunities depend. Sadly, misguided competitors will cheapen their product—in this case a reduction of rigor and quality of legal education—in order to be successful in capturing students. Legal education will suffer, and America's law schools, as a whole (there will be exceptions), may be impaired in their attempt to help achieve the rule of law in the new social order that we are entering.

The External Threat

The external threat is actual and gravely serious. Simply put, it is that law faculties soon may no longer be able to attract the very best minds into law teaching. The signs are there now, and the future is ominous.

One sign is that many of this nation's best law schools currently have large numbers of unfilled faculty positions which have remained unfilled for several years, despite energetic recruitment efforts. In some areas, such as parts of the Ivy League and Big Ten, law schools have had 10 to 20% of their positions unfilled with permanent faculty for two or more years. Last year Harvard had 20 visiting faculty members. Some visitors, obviously, were associated with special programs, but many were just filling in. Top law schools think it wiser to staff with first-rate visitors and wait rather than fill a position permanently with a second-rater. The phenomenon of empty faculty positions is a crucial sign because no law school likes to have unfilled, or uncommitted, positions. They mean that needed programs are delayed, and they are too easily lost to other university units, especially during times of inflationary budget pressures and declining student enrollments.

Although all of them would not make good faculty members, a second sign is the diminishing number of clerks from the U.S. Supreme Court and Courts of Appeals, and the diminishing number of graduates in the top 5% of their law classes, who are entering teaching. Ten years ago half of the U.S. Supreme Court clerks entered teaching; today, that number is considerably less. The same is true of the top law graduates.

A third sign is the decreasing number of experienced, high-quality lawyers moving from this nation's leading law firms into teaching. These firms tend to have the most rigorous selection practices, seeking an intellectual and professional competence similar to that of law schools. A decrease in this category is disturbing indeed.

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These signs point in one direction—a beginning erosion in the quality of law faculties. So far, the University of Washington has escaped. One reason that has been offered for these changes is that there has been a general decline in the prestige of law teaching. That is probably true. Some young people with distinguished records prefer more action oriented jobs with government or volunteer groups rather than teaching. A second explanation is the rise of the two-career family with its attendant decrease in mobility, particularly to small communities where many law schools are located.

Neither of the above two reasons is adequate. The real reason is MONEY, and, of course, inflation, although the problem would exist even if there were much, much less inflation. Salaries in private law firms have more-or-less kept up with increased prices and inflation, but law faculty salaries in academia certainly have not. Why should an exceptionally gifted law graduate, and family, suffer the pains of lesser income in academia while doing an equal or greater amount of work than his lawfirm equivalent? Starting salaries of \$35 to \$40,000 are common in leading New York, Chicago, Washington D.C. and Los Angeles law firms, with \$50,000 after five years of experience being common. On the other hand, the beginning law teacher who has been out of law school one or two years is very lucky to have a salary of \$30,000, and certainly will not make \$40,000 after five years of successful experience. Thus, the gifted law graduate with two years of practice must take a substantial cut in salary to enter law teaching today, and it comes when a young person can afford it least. This is quite a change from ten years ago when law schools were able to offer beginning salaries equal to those offered by leading law firms. Then, a person need only give up the prospects of substantially higher future earnings to enter law teaching. But, even in this situation, subsequent salary differentials today are becoming so very great that there is a slow but increasing exodus of experienced law professors leaving teaching for the practice.

As one looks ahead and contemplates the tenacity of price inflation, the future of legal education is ominous. Faculty salaries may average an increase at the rate of 2 to 4% a year—hopefully—depending upon many factors beyond faculty control like the state of the local economy, a state's tax structure, the possibility of a tax revolt and the generosity of a legislature. But, the most likely future is continued price inflation at 8 to 10 percent a year, or more. Law firm salaries will keep up with inflation, more-or-less, but as time passes law faculty salaries, at all levels, will fall farther and farther behind. Some of the erosion is already being felt as imaginative and scholarly law faculty members are more frequently preparing outlines, nutshells, study aids, and riding the CLE and bar review circuits—all for extra money. At the same time we see a decrease in genuinely

scholarly efforts today. There is a significant decline in the number of treatises written at a high intellectual level.

In these circumstances, how can law schools hire and retain the most intellectually gifted lawyers of our day? Universities simply cannot supply the necessary funds. Hopefully, law schools will not settle for second-rate faculty members. But, to attract an excellent person, law schools may have to permit unabashed consulting solely to supplement income and/or part-time or perhaps more than part-time law practice. That situation soon becomes almost indistinguishable from a part-time faculty of law practitioners. Everyone knows that practice takes enormous time, and takes it from a professor's true calling. It frequently focuses his scholarly mind on the wrong problems. Under such law-school circumstances, it is impossible to produce a Wigmore, a Scott, a Corbin, a Wiliston, a Prosser, a Wright or a Moore, not to mention a Pound, a Llewellyn, a Fuller or a McDougal. If a conflict occurs between a scheduled class and a court appearance or a consulting conference, the class is always sacrificed. What busy practitioner can practice and also teach rigorous classes regularly scheduled for mornings at 10, 11 or 12 o'clock, recognizing that substantial time-consuming preparation must occur well before and immediately before every class? Moreover, under these circumstances, who will have the time to do the necessary basic research and create the new ideas required to

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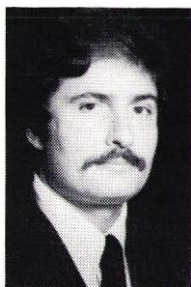
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submit America's newly emerging social order to the rule of humane law? Inevitably, law teaching, and the law curriculum, will become more and more fractured and innovative legal research will tend to disappear. By year 2,000 the full-time law teacher may become the exception, and the larger number of new law teachers will be practitioners.

We all have a stake in this matter. The private law firms and corporations that employ large numbers of recent law graduates have the greatest immediate stake in the continued excellence of America's law schools. Ironically, they may find that in a few years they will have to institute programs that provide their new associates with educational experiences similar to those now provided by America's law schools. If new sources of funds are not forthcoming, perhaps from these same law firms and corporations, we will witness the steady decline of law schools as we have known them. The American people may well suffer because lawyers will be less able to perform their traditional public roles. As a whole, lawyers will be less well educated, and therefore, less capable of helping the American people become more free, prosperous and generous while forging a more perfect union. That, to my mind, is a very serious matter indeed. □



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WASHINGTON STATE BAR NEWSLINE

The Board's Work



by Steven A. Reisler

CONTINUING LEGAL EDUCATION - WHERE IT'S AT & WHERE IT'S GOING

HARRISON HOT SPRINGS, B.C., November 6-7 -- John Michalik, Director of Continuing Legal Education, and Tacoma lawyer Elvin Vandeberg, Chairman of the State Bar's CLE Committee, presented a two-

hour overview of the State Bar's CLE program's activities, past and future.

CLE is a \$432,000 annual budget item which, until recently, has roughly maintained a net income-versus-expenses equilibrium. The program maintains a 2:1 ratio of direct to indirect costs. In prior years, CLE losses have averaged only about \$7-8,000; in fiscal year 1976-77 CLE actually produced approximately \$19,000 in excess revenue. In fiscal year 1979-80, however, the program showed a net loss of \$90,000, and another net loss is expected in 1980-81.

Michalik told the Board that the philosophy underlying this state's CLE activities is that it should operate at as close to cost as possible. Thus, unlike the CLE programs for many other states, Washington's CLE program is not intended to be a revenue-producer on a par with membership dues. According to Michalik, the CLE program's long-term economic situation has been basically healthy -- except for the inability of the program to quickly adapt to sustained high inflation. From 1970 until 1980, the basic tuition schedule for CLE courses was changed only once. This fixed the income of the program at a time when costs rose dramatically. Finally, in the summer of 1981 (see Bar News 35:8:23), the Board of Governors voted to adopt an unstructured tuition policy which seeks to make CLE self-sustaining on a program-to-program basis.

The real cost to Washington's attorneys, Michalik told the Governors, is the billable time lost traveling to and attending seminars. In an effort to trim the time loss, CLE has initiated holding seminars in a variety of locations around the state, moved cautiously into the area of videotaped presentations and pioneered satellite simulcast seminars. The CLE program has also attempted to make the program intrinsically more valuable by initiating a "course level" rating system and by binding program literature in stiff-cover, 3-ring notebooks.

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The CLE department generates major publications in addition to seminar materials. Three deskbooks and a handbook have originated from the CLE department, including The Community Property Deskbook, Washington Real Property Deskbook, Washington Civil Procedure Before Trial and Washington Appellate Practice Handbook. Due for future publication are the Washington Commercial Law Deskbook, Washington Civil Trial Procedure Deskbook and Washington Partnership Law Handbook. Michalik estimates that lawyers contribute greatly to the Handbook and Deskbook publications. He estimates that lawyers and judges contributed nearly \$1 million in professional time in preparing the Community Property Deskbook.

Individual State Bar sections participate heavily in the CLE program. Under a revenue-splitting schedule set up by the Bar, sections earn substantial income by cosponsoring CLE seminars. Although the sections will continue to be autonomous, some voices at the Board meeting expressed the opinion that the State Bar must retain controls on the quality and fiscal viability of seminars sponsored by the sections.

More innovations are planned for future CLE offerings. In response to Lee Campbell's inquiries about liberalizing standards for videotape CLE presentations, Michalik stated that current rules require the presence of a "live commentator" in order for CLE credit to be awarded. Consequently, home-viewing of videotape CLE programs will not qualify for credit. Although Michalik acknowledged that enforcement of home viewing of videotape CLE cassettes/disks would be no less difficult than the present honor system, he stated that the line had to be drawn somewhere.

Michalik also told the Board that CLE rules are specially designed to prevent large municipal law firms from unfairly benefitting from in-house training programs. Thus, an in-house training program cannot qualify for CLE credit unless at least one other firm participates in the program.

CLE's liberal certification policies inspired the most criticism. Executive Director Friar explained that the Bar Association's present liberal certification policies took shape at the inception of mandatory CLE when, in an effort to prove that mandatory CLE was not a money-making gimmick, the Bar deliberately certified outside course offerings in order to avoid monopolistic appearances. Now, Friar noted, it is probably time to tighten up that certification process. Although he believes most of the nationally sponsored CLE seminars are worth their salt, Michalik expressed reservations about some in-state programs which request CLE certification. Michalik explained that current certification standards are so loose that programs designed solely to exploit mandatory CLE and devoid of any true educational value can sometimes be accredited. Although the appeal process has not yet been tested, an applicant for CLE certification, once rejected by the CLE Board, can appeal to the Board of Governors and then to the Supreme Court.

BOARD ADOPTS MEETING AND CONVENTION SCHEDULE

The following is the schedule for meetings of the Board of Governors in 1981-82: December 11-12, Seattle; January 15-16, Olympia; February 12-13, Southcenter/Tacoma; March 12-13, Yakima; April 19-20, Port Angeles; May 14-15, Spokane; June 18-19, Victoria, B.C.; July 16-17, LaConner; and August 20-21, Salishan, Oregon (long range planning session).

By unanimous vote, the Board has settled on the following convention schedule: 1982 - Vancouver, 1983 - Spokane, 1984 - Vancouver, and 1985 - Seattle.

The Board's decision to hold the '85 convention in Seattle was based on the results of the Bar Association's first-ever survey of lawyers (see Bar News 35:5:21). According to the results of that poll, 75% of the responding lawyers favored an occasional convention in Seattle. Executive Director Friar pointed out that a Seattle convention probably would not be a success, however the Bar should nonetheless be responsive to the wishes of the membership. Friar mentioned that the Louisiana bar conventions used to be held in New Orleans and were unmitigated disasters. That state's bar has, therefore, chosen Biloxi, Mississippi as its permanent (and very well attended) bar convention site. Upon hearing this news, Governor Beezer was heard to mumble the suggestion that Washington, too, hold its convention in Biloxi.

SALES TAX ON ATTORNEYS FEES OPPOSED

President Welts reported to the Board that the legislature sitting in special session might try to impose a sales tax on legal services. Although prior attempts to impose a sales tax on attorneys fees have also targeted doctors, dentists and realtors, Welts expects that legislation this time will solely be aimed at lawyers. Fourth District Governor Read commented, however, that if the legislature imposed a sales tax on lawyers, "the camel's nose would be in the tent," and other professionals would feel the tax bite come the next fiscal emergency.

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Welts, who characterized the proposed tax as a "tax on misery," remarked that a sales tax on legal services would create tremendous bookkeeping problems for lawyers, but that the ultimate cost would be borne by clients.

OTHER BOARD ACTIONS:

- Rule 8s Permitted to Supervise Rule 9s -- By a 7-2 decision, the Board voted approval of Governor Campbell's motion to propose a "practice rule" change such that Rule 8 admittees to limited practice can supervise Rule 9 admittees who are participants in a clinical education program. The Board attached the condition that affected Rule 8 candidates be required to pay the \$175 investigation fee charged to all other bar applicants.
- Oregon to Buy WSBA Software? Executive Director Friar told the Board that Oregon's bar association has taken the first steps toward computerization. In just getting its program on its feet the Oregon Bar has already expended \$20,000 more than the WSBA did nearly two years ago for a complete system. The Oregon Bar has expressed some interest in purchasing WSBA computer programs.
- Six Jurors for Class C Felonies? The Board unanimously voted to send a Superior Court Judges Association proposed constitutional amendment to the Legislation and Criminal Law Committees. The proposed amendment could result in six-person juries in civil cases and in certain criminal cases.
- Disciplinary Board Slot Filled -- The Board acted to temporarily fill a slot on the Disciplinary Board vacated by a Spokane lawyer who could not participate for health reasons. Upon the recommendation of Governor Dean, Spokane lawyer Mike Herovich was approved to sit on the Disciplinary Board for the interim.
- Constitutional Convention -- At its October meeting in Seattle, the Board voted to decide the lingering question whether it should actively oppose or support a constitutional convention to mandate a balanced federal budget. Although the issue was originally slated for the November meeting in Harrison Hot Springs, the matter was rescheduled for the December meeting in Seattle in order to give interested parties a better opportunity to participate.

THE DECEMBER MEETING OF THE BOARD OF GOVERNORS WILL BE ON THE 11TH AND 12TH AT THE WARWICK HOTEL IN SEATTLE. THE JANUARY MEETING WILL BE ON THE 15TH AND 16TH AT THE TYEE INN, OLYMPIA.

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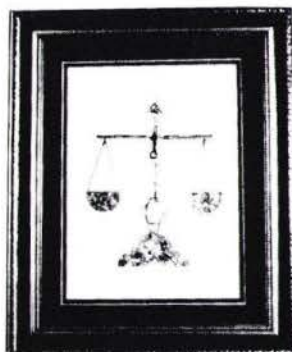
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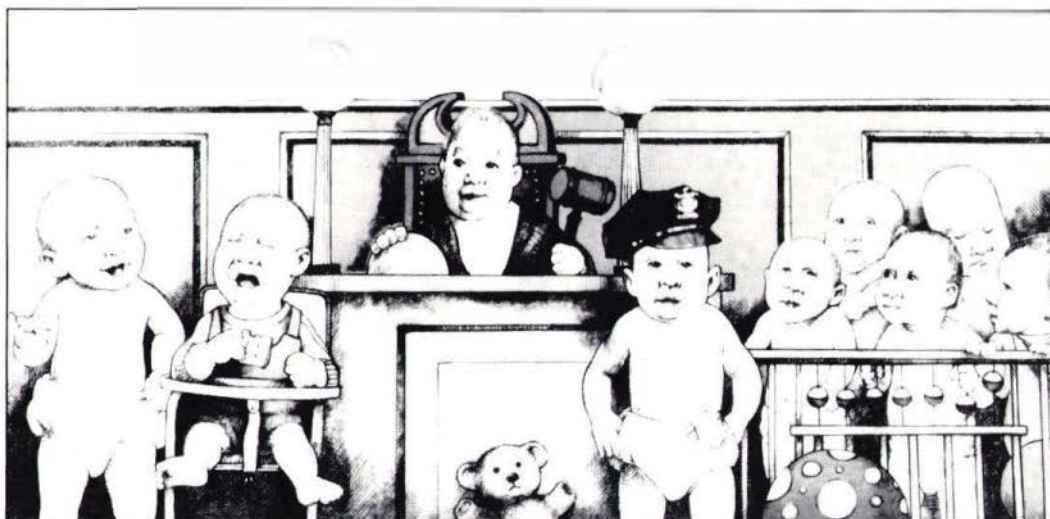
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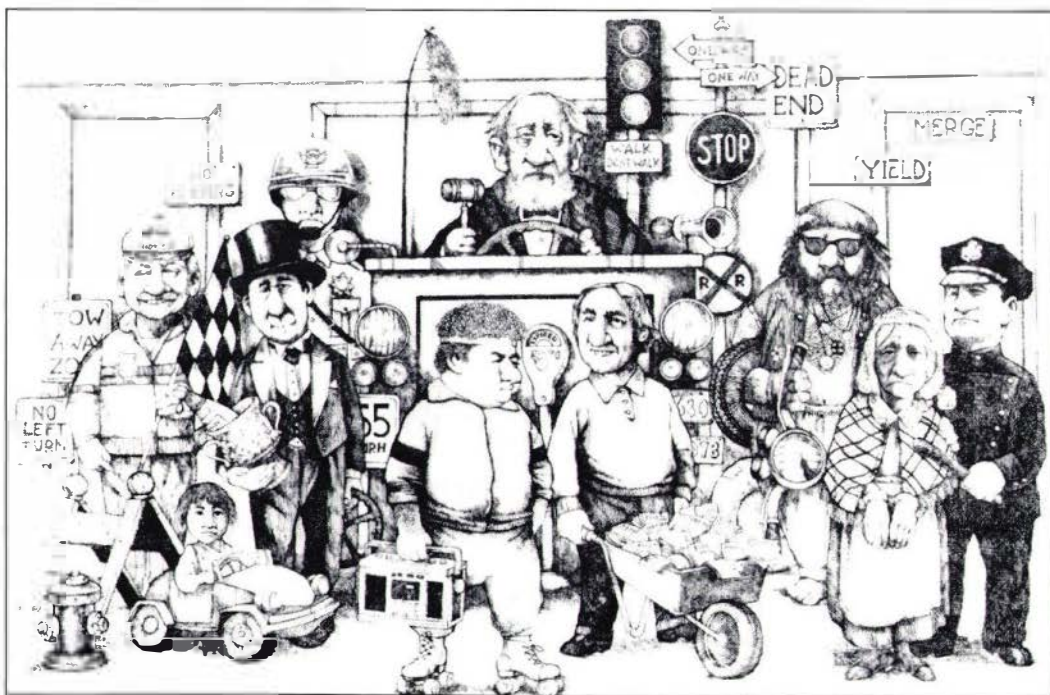
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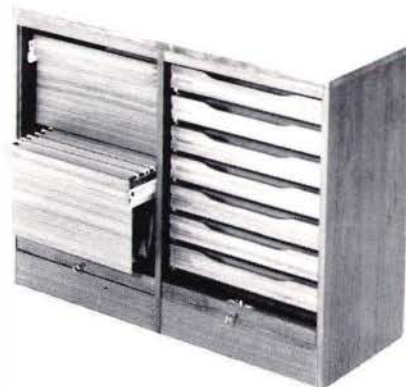
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Legal Assistants — Recognition for a Professional Member of the Legal Services Team

by Evan Inslee on behalf of the Washington State Bar Legal Assistants Committee with comments by Nicholas Ledbetter, past-President of the Washington Legal Assistants Association.

NOTE: *The following article is printed to facilitate informed discussion in the legal community about legal assistants. It does not represent an official position of the Washington State Bar Association or its Board of Governors. The Board of Governors will address the issue of whether to submit proposed regulations to the Supreme Court at a future meeting.*

The Washington State Legal Assistants Committee of the Washington State Bar Association has been working on a definition of a legal assistant and recommended guidelines related to their utilization by lawyers. Other issues have been addressed by the Committee, such as the pros and cons of certification of legal assistants, their role in the delivery of legal services, economics of their use, and related matters, which will not be discussed in this article.

The Committee is composed of lawyers and lay members representing community colleges, as well as representatives of legal assistant associations, including the Washington Legal Assistant Association and the National Association of Legal Assistants.

It was the recommendation of the Committee that legal assistants be recognized by the bench and bar (short of a certification procedure) to recognize the legal assistant as a professional member of the delivery of legal services team. The Committee suggested that this be accomplished by obtaining approval of the Board of Governors and its recommendation for a proposed Superior Court Rule authorizing, on a local option basis, legal assistants to perform certain services that otherwise may require a lawyer. The exact term and scope of the proposed rule has not as yet been recommended, but would include, for example, the right of a legal assistant to present ex-parte orders to the court.

It became apparent at the outset that before any rule could be drafted, that it would be necessary to define a legal assistant in order to describe this relatively new, but important participant in the legal field. It is not the purpose of this article to discuss whether legal assistants really have been with us for 75 years or whether secretaries have or have not been performing legal assistant duties for some time. The fact of the matter is that legal assistants exist—they are real and no matter how lawyers may regard them, the Committee recognizes them as distinct members of the law team.

The Committee has proposed guidelines for the use of legal assistants. The Committee wants feedback on this matter from lawyers across the state prior to recommending guidelines to the Board of Governors. The Washington Legal Assistants Association (WLAA) has a member on the Committee and the Association disagrees with the definition and the guidelines, as proposed by the Committee. For this reason, a separate WLAA statement on guidelines regarding legal assistants is contained in this article.

Why a definition of a legal assistant?

1. Recognition of the legal assistant profession by Superior Court Rule would enhance the image of this fast growing profession. Before such rule can be recommended, the term legal assistant must be defined.

2. If the bar does not take steps to recognize legal assistants, then the legislature may, in its wisdom, attempt to regulate legal assistants as it has dental hygienists, nurses, and others who work in concert with other professionals. To prevent such a scenario, the bar should preempt the field on this issue.

3. Fees are charged to clients and courts are asked to

Evan Inslee is a partner in the Bellevue law firm of Inslee, Best, Chapin, Uhlman & Doeze, P.S. He is chairman of the Washington State Bar Legal Assistants Committee.

award attorney's fees which include fees based on the work performed by legal assistants. Work performed by legal assistants results in the more economical delivery of legal services to the public. Recognition, either by the bar association or by court rule, would highlight the economic reality of the use of legal assistants.

4. The American Bar Association, bar associations throughout the country, educational institutions, and lawyers generally, acknowledge the concept of legal assistants, whether referred to as paralegals or otherwise. Obviously the fine line between the unauthorized practice of law and what can be done by a legal assistant will not be resolved by guidelines. The purpose of the guidelines would be to focus the issues. Not all lawyers are as familiar with the use of legal assistants as in some of the larger metropolitan areas.

In attempting to define the legal assistant, we recognized that the definition must be as short and as noncontroversial as possible. In order to gain maximum lawyer support, the definition should not attempt to set forth in detail what a legal assistant does. The National Association of Legal Assistants definition states:

"Under the supervision of a lawyer, the legal assistant shall apply knowledge of law and legal procedures in rendering direct assistance to law-

yers, clients and the courts; design, develop and modify procedures, techniques, services and processes; prepare and interpret legal documents; detail procedures for practicing in certain fields of law, research, select, assess, compile and use information from the law library and other references; and analyze and handle procedural problems that involve independent decisions."

A community college recommended this definition:

"A legal assistant is a professional who is qualified to do any legal work other than the practice of law, that a lawyer is willing to delegate, and a legal secretary is not qualified to do."

The Committee believes that the definition and guidelines should only relate to use of legal assistants by lawyers. The definition and guidelines should not regulate, define or attempt to set up guidelines which deal directly with the lawyer's employees. Thus, the Committee's recommended definition and guidelines are couched in directions to lawyers and not in directions to the legal assistants. Neither the bar nor the judiciary purport to directly regulate employees of the lawyer. Rather, the bench and bar direct lawyers. This may be one of the essential differences between the guidelines proposed by the Committee and the guidelines recommended by the Washington Legal Assistants Association.

Proposed Definition of a Legal Assistant:

After thorough review, the proposed definition of a legal assistant ultimately adopted by the Committee was the definition previously adopted by the Washington Legal Assistants Association with one important change. The Committee added that the services of a legal assistant would be performed "under the direction and supervision of a lawyer":

"A legal assistant is a professional who has training in and knowledge of the law and its procedures and, under the direction and supervision of a lawyer, assists in the delivery of legal services."

This definition highlights the fact that the legal assistant is a professional and that this professional has training and knowledge of the law. It emphasizes that the legal assistant does perform services under the direction and supervision of a lawyer. The definition deliberately avoids defining what type of legal services a lawyer may direct the legal assistant to perform. The definition does not apply to legal assistants authorized to perform legal assistant-type services before a state or federal agency, or who are part of a group not under the direct supervision of a lawyer.

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Guidelines

The following guidelines to be recommended to the Board of Governors are intended as guidelines directed to an attorney utilizing legal assistants' services. Although some of the guidelines may merely set forth that which is already a part of the Code of Professional Responsibility, it is suggested that it would be of assistance to the bench and bar if certain provisions thereof were restated in the form of guidelines insofar as particularly applicable to the utilization by lawyers of legal assistants. The guidelines are intended to promote the growth of the legal assistant profession, in accordance with the Code of Professional Responsibility. They are not intended to stifle the proper development and expansion of the utilization of legal assistants, but are to provide guidance and to assist in the use of legal assistants by attorneys.

1. A lawyer may permit a legal assistant to perform services for the lawyer in the representation of a client, unless otherwise precluded by statute, the Code of Professional Responsibility, or court rule or decision, provided that the lawyer:

A. Authorizes and supervises the work performed by the legal assistant;

B. Retains a direct relationship with the client; and

C. Remains fully responsible for the representation of the client, including all actions and failures to act of the legal assistant in connection with the work performed by the legal assistant.

2. A lawyer shall require a legal assistant, under the lawyer's supervision, to read, become familiar with, and abide by the Code of Professional Responsibility as adopted by the Supreme Court of the State of Washington.

3. A lawyer shall exercise care that the legal assistant preserves and refrains from using confidences and secrets of the client, and does not disclose such confidences and secrets.

4. A lawyer shall, prior to authorizing a legal assistant to perform work, assure to the satisfaction of the lawyer that the legal assistant has sufficient knowledge of the law and legal procedures to render legal assistance to lawyers' clients, and the courts, within the scope of the work assigned to the legal assistant.

5. A lawyer shall require the legal assistant, when performing services historically performed by a lawyer, in dealing with a client, the public, the court, or administrative agency, or any attorney, that may be unaware of the fact that the legal assistant is not a lawyer, to disclose at the outset that the legal assistant is not a lawyer.

6. A lawyer may authorize a legal assistant's name to be stated on a business card bearing the lawyer's name or

firm, provided the legal assistant's status is clearly indicated thereon, and provided further, a legal assistant may sign correspondence relating to the legal assistant's work as long as the status of the legal assistant is clearly indicated.

7. A lawyer should not:

A. Include the name of the legal assistant on the letterhead of the lawyer (see WSBA Opinion 163 and 164 and ABA Informal Opinion 845);

B. Enter into any partnership or corporation or other entity with a legal assistant, if part of the partnership, corporation or other entity's activities consist of the practice of law; and

C. Share a legal fee with a legal assistant or enter into any compensation agreement whereby the legal assistant's compensation is directly related to the fee charged by the lawyer to a client, provided a legal assistant may be included in the pension or profit sharing plan of the lawyer-employer.

It is obvious that the guidelines are directed to the activities of the lawyer who in turn utilizes the legal assistant. The guidelines are purposely not directed to legal assistants because legal assistants are not members of the bar association.

The guidelines paraphrase certain concepts of the

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Code of Professional Ethics. It was the consensus of the Committee that the ethical considerations be highlighted in the set of guidelines so that they would be instructional. Further, the guidelines may be reviewed by those not familiar with the Code of Professional Responsibility.

The guidelines were consciously directed to criticisms some lawyers may have regarding the use of legal assistants. As the use of legal assistants increases throughout the state, it will be obvious that other guidelines will have to be adopted to deal with specific issues that may arise. The fact that certain issues are highlighted in the guidelines should not be read as recognition of current problems.

Obviously, the legal assistant should become familiar with and abide by the Code of Professional Responsibility. It is redundant to then state that the lawyer should exercise care that the assistant preserves and refrains from using confidences and secrets of the client. The point is that in order to gain lawyer support, the Committee thought that highlighting the Code of Professional Responsibility would promote the acceptance and recognition of legal assistants.

Most of the guidelines are modified guidelines utilized by bar associations in other states, namely New York and Michigan. One unique guideline, however, is Guideline 4 which states that it is up to the lawyer to assure himself

or herself that the legal assistant has sufficient knowledge of the law and legal procedures to render legal assistance to the lawyer's clients. In the absence of certification, and in the absence of any other qualifying body to determine who is and who is not a legal assistant, it is up to the lawyer to make that decision. The guideline further highlights the responsibility of the lawyer and is an attempt to mollify those who are concerned about legal assistants.

Guideline 5 requiring a legal assistant to disclose his or her position to the client, the public, court or other attorney, is necessary because of the high probability that under certain conditions, lay persons, or other persons dealing with legal assistants, may assume that the legal assistant is, indeed, an attorney.

Guideline 7A prohibiting the listing of a legal assistant on letterhead of a lawyer, and Guideline 6 permitting a legal assistant to use business cards does nothing more than set forth the position of the ABA and the Washington State Bar Association as already set forth in ABA Informal Opinion 845 and WSBA Opinion 163 and 164.

It should be noted that with the exception of Guideline 4, all of the guidelines are contained in guidelines adopted by other states that have considered the matter.

WLAA's Statement on Guidelines Regarding Legal Assistants

The Washington Legal Assistants Association (hereafter WLAA), which currently represents over 350 active legal assistants throughout the state, has participated on the Washington State Bar Association Legal Assistant Committee since its revitalization in the spring of 1979. The goal of the Committee is to adopt a definition and guidelines which promotes the use of legal assistants. These guidelines may eventually form the basis of Local Court Rules governing the profession. WLAA did not agree with the Committee about the approach and direction the guidelines should take. Hence, WLAA's proposal is set forth as follows:

WLAA, through its ad-hoc committee and with input from legal assistants and attorneys across the state, has submitted the following set of guidelines:

WLAA Proposed Definition

"A legal assistant is a professional who has training in and knowledge of the law and its procedures and assists in the delivery of legal services."

WLAA Proposed Guidelines

1. A legal assistant shall read, become familiar with,

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and abide by the Code of Professional Responsibility as adopted by the Supreme Court. In general:

A. A legal assistant shall not engage in the unauthorized practice of law;

B. A legal assistant supports a direct relationship between the attorney and her/his client;

C. A legal assistant shall understand that the attorney is fully responsible for the representation of the client, including all actions and failures to act of the legal assistant in connection with the work performed by the legal assistant and that the attorney shall supervise the legal assistant's work accordingly;

D. The legal assistant shall obtain the authorization of and remain responsible to the supervising attorney for all work performed.

2. Within the constraints of the Code of Professional Responsibility as adopted by the Supreme Court, and to the extent permitted by statute, rule, or decision of the court or administrative rule or regulation, a legal assistant may perform any task properly assigned to her/him.

The concern of WLAA regarding the proposed guidelines submitted by the Committee is that any guidelines should effectively promote the legal assistant profession. The Committee guidelines do not. Legal assistants are not a "problem" but a resource to be incorporated into an attorney's practice to improve profitability and to expand the availability of legal services to the public.

The guidelines should recognize the legal assistant's responsibility to abide by the ethical considerations of the Code of Professional Responsibility. The Committee guidelines do not.

Specifically, Guideline 4 suggests an endorsement of legal assistant certification. The WSBA Legal Assistant Committee has stated that it does not intend to either develop or endorse a certification program. Also, the mandate of Guideline 4 is covered by the definition of a legal assistant, and thus, is repetitive.

The intent of Guideline 5 is to prohibit legal assistants from misrepresenting themselves as attorneys and to avoid the appearance of practicing law. The intent is not disputed. However, as stated, it requires each legal assistant to identify his or her title for every job-related contact made. Legal assistants would be hampered in performing investigative functions and other responsible work if it were necessary to comply with this technicality.

Guideline 7 is essentially a regulation. It is not a guideline. These matters are more properly addressed by individual law firms and should not be dealt with here.

It is hoped that lawyers throughout the state will take the time to consider the definition, guidelines and the commentary from the Washington State Legal Assistants Committee, as well as the comments from the

Washington Legal Assistants Association, contained in this article. The comments should be addressed to the Washington State Bar Association Legal Assistants Committee, 505 Madison Street, Seattle, Washington 98104. Once the comments have been received, the Committee will reconsider the definition and guidelines. The guidelines and definition will then be submitted to the Board of Governors and, if approved, will be used as the basis for formulating a local court rule which can be adopted at the option of the various counties throughout the state. □

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I can't take credit for originating the above phrase which serves as the title for this column, but it seems to attract attention. And speaking of attention-getters, there are two noteworthy seminars coming up during the early part of 1982 that you should keep in mind.

If you still have questions about, or want to develop your understanding of, the recently enacted tort and products liability legislation, then *Tort and Product Liability Reform: The New Act* is a seminar you'll want to make plans to attend. Coming to an area near many of you, this seminar will be taken "on the road" to five different sites, namely: *Seattle* (January 29, 1982), *Olympia* (February 5, 1982), *Spokane* (February 19, 1982), *Yakima* (February 26, 1982), and *Vancouver, Wa.* (March 5, 1982). Speakers at the seminar will deal with such topics as the legislative history behind the act, contribution and comparative negligence, and representing the plaintiff/representing the defendant in a products liability case. *Mark your calendars now* for a presentation date near you!

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On a practical note, as 1981 ends and January approaches keep in mind that soon you will be receiving letters, (if you have not already received them), requesting the submission of your affidavit showing compliance with the mandatory CLE rule. It's not too early to begin piecing together information about the credits you've earned for 1981 and the credits you intend to use as carryover credits for 1982.

If you have not already done so, why not take a few minutes this week to devise a simple record-keeping procedure for your CLE credits. For your benefit, two forms which appeared in our CLE 1980-1981 Index of Programs and Publications are reproduced below as suggestions for possible use:

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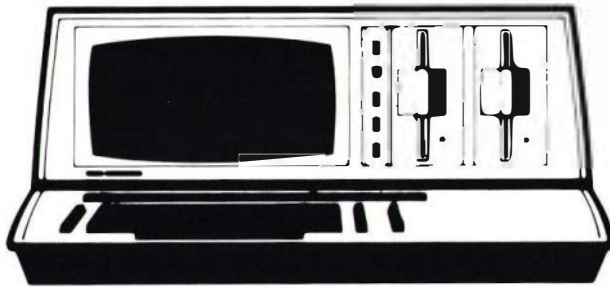
ACTUAL EXPENDITURES		
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FORM #2

SIMPLIFIED CLE RECAP SHEET

DATE	COURSE/SPONSOR	COST	CREDIT HOURS ATTENDED	RUNNING TOTAL
1979				
10-5	TRIAL ADVI (WSBA)	\$ 45	6.50	6.50
11-5/6	ESTATE PLANNING (WSBA)	\$ 75	11.50	18.00
12-21	SMALL BUSINESS (WSBA)	\$ 50	6.50	24.50
1980				
1-7	FILED 1979 AFFIDAVIT REPORTING 24.50 HOURS for 1979. 15.00 HOURS FOR 1979 REQUIREMENT: 9.50 CARRYOVER TO 1980			
1-11	FAMILY LAW (WSBA)	\$ 45	5.00	5.00
3-21/22	SKILLS TRAINING (WSBA)	\$140	18.00	23.00
5-9	CRIMINAL LAW (WSBA)	\$ 45	5.00	28.00

That completes this month's Clearinghouse column. Now, sit back, enjoy the remainder of this issue of the *Bar News*, and take a deep breath; 1982 is just around the corner.



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SOUTH KING REPORT

by MARILYN JORDAN

At the October South King County Bar Association meeting, the Honorable Judges **Robert E. Dixon**, **Frank J. Eberharter**, **David C. Hunter**, **Richard M. Ishikawa**, **John G. Ritchie**, **Stanley E. Stone**, **Roger I. Lewis**, and **Richard P. Thompson** were present; also present were 48 well-behaved members. A swelling membership and attendance is indication of the friendliness and energy of this year's President, **Jack Hawkins**. This is the second time Jack has been President during the 22-year existence of the SKCBA. One of Jack's many goals for this year needs outside assistance, that is, the recovery of any and all records, minutes, photographs, awards, memorabilia, or what have you, that anyone may have concerning the officers, accomplishments, awards, meetings, and membership of the South King County Bar Association. Give Jack a call or write him if you can help.

Rick Barney has been brain-draining again: Included are **David Olwell** from Capitol Hill (Seattle, that is); **Harvey Rotman** from Tulsa, Okla.; and **Steve Toole** from Port Orchard. We have a new partnership in Renton: **Jim Cayse** has joined brother **Kam Cayse** and **Deborah Fleck**. **Debbie Fleck** and her husband, **Rynold E. Fleck** who practices in Des Moines with **Clark Snure**, are new parents. The Flecks are coming along fine with both careers and parenthood.

We note that over 500 new attorneys will be sworn in soon, while many of those of Bars Past are reestablishing offices in King County, including the South County. **Patrick Lepley** has joined Judge **Murray McLeod** in private practice in Kent. **Bryan "The Kid" Russell** (from Kansas) is officing with **Donald Watson** and **Bill Christie** in Burien. Incidentally, if you have seen Bill hob-

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bling about covered with bruises and bandages and wondered, he advised that building his vacation lodge on a hillock outside of beautiful, downtown Ronald accounts for it—after the lodge comes the ski tow and swimming pool!

Jack Burgeson has moved from the Sea-Tac Office Building to the new Cole & Weber office building at Southcenter on a big bend of the Duwamish River—Jack may step directly from his office onto the City of Tukwila's 3-mile jogging and fitness path that meanders under huge Cottonwood trees along the river. New-comer **Joseph A. Breidenbach** from North Dakota is facing it alone on Aumbaum Blvd., S.W., where he can step directly onto a 11-mile Macadam road maintained by the County. Not-so-new-partners **Fred Mendoza, Jerry Belur, and Gregory F. Cromwell** have offices at Southcenter and do their jogging to and from the bank.

Attorney and engineer **Charles**

Branson has returned to the practice of law after having taken a year's sabbatical to invent, patent and manufacture for The Joyful Toy Company a frisbee-like disc that whistles when thrown. It is nice to be a multi-professional.

Florence Mayne Merrick, who became a member of the Bar in 1921, has returned to Seattle from Pasco to retire at the Gran Vista Retirement Center on Highway 99 South. She and her friend, **Lady Willie Forbus**, were anomalies in the Bar membership back then. Now, in South King County, **Carolyn J. Hayek, Suzanne S. Matsen, Edna Verzani** and **Symone B. Scales** are practicing in Federal Way; **Barbara Bauch Heavey, Valerie Knecht, Jennifer Rydberg** and **Michele Gentry Hinz** are in Kent; and, as mentioned, **Deborah Fleck** is practicing in Renton with **Kam Cayce**.

Congratulations and Commiserations: Will the winners and the losers of the 1981 PHIL BIEGE Open Golf

Tournament please identify themselves before the next issue?

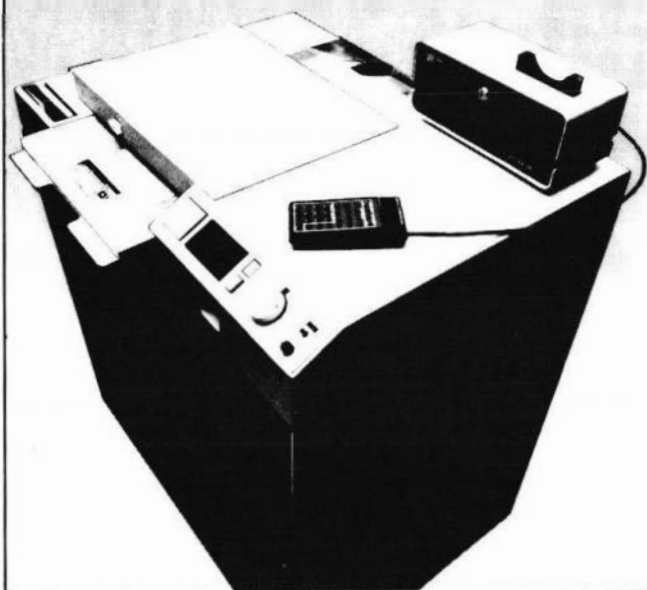
PIERCE REPORT

by George Kelley

Tacoma City Attorney, **Bob Hamilton**, has announced that he and his staff will be moving to new offices in the new City Hall (old Medical Arts Building). Due to reductions in federal funding there will be no office warming party.

The bar association has circulated its preference poll to aid the governor in selecting a replacement for retiring Judge **James Ramsdell**. Unlike past preference polls which were popularity contests, **James Lowry** and his Judicial Qualifications Committee have devised a computer-card evaluation process whereby each of the eleven applicants are to be rated as to legal ability, judicial temperament, and industry. Unfortunately the new

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system requires a little more hand-eye coordination and ability to follow simple directions than the average Pierce County attorney possesses. However, the governor, in appointing the most qualified Republican, is likely to ignore the bar poll anyway.

Sports: **Bob Grey**, driving a Datsun sedan, won his class in a summer-long series of sportscar races at various tracks in Washington, Oregon and British Columbia.

The annual football game between the law firms Gordon, Thomas, et al. and Davies, Pearson, Anderson, P.S. was won by the Gordon firm, 28 to 7. Touchdowns for the winners were scored by **Mike Hitt**, **Tim Whitters** and **Ron Leighton**. The losing team, suffering from a lack of team speed, may retire veteran lineman **Bert Johnson**, and draft some young and quick interns for next year's contest.

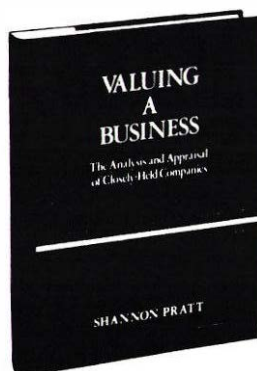
Laura Jaeger says that contrary to rumor she did not retire from the practice after the birth of her child. Her new offices are in Federal Way.

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Discipline

Anton J. Miller Reprimanded

Anton J. Miller of Raymond, Washington was reprimanded by the Board of Governors on October 16, 1981. Mr. Miller was reprimanded for stipulating to a judgment against clients of his which made the clients potentially liable for substantial money damages, although he knew he had no authority from his clients to agree to such a provision. His conduct was found to be in violation of DR 1-102(A)(4), prohibiting conduct involving dishonesty, fraud, deceit or misrepresentation; and DR 1-102(A)(5), prohibiting conduct prejudicial to the administration of justice.

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In Memoriam

J. Bruce Burns, 56, of Tacoma, died October 20. He was admitted to the Bar in 1952.

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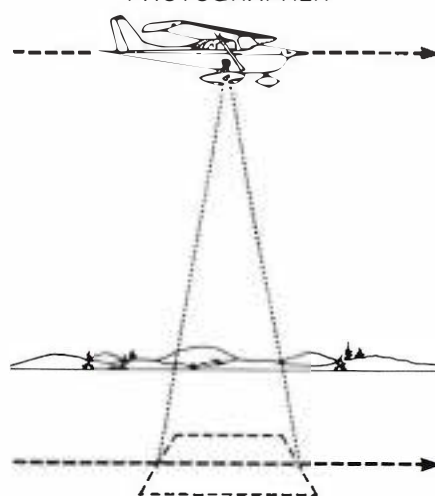
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