Volume 36, Number 2
February 1982

WASHINGTON STATE BAR NEWS

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Volume 36, Number 2
February 1982

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WASHINGTON STATE BAR NEWS

FEATURES

IN THE NEWS

DEPARTMENTS

Our Cover

February Snowpourri: the backside of Mt. Rainier in winter. Photograph by K. Reisler.

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Letters to the Editor of reasonable length are invited. Such letters should be typed and signed. The Editor reserves the right to select communications or excerpts therefrom for publication and to edit any letter as may be appropriate.

"Hypocrisy" Article Well-Done

Editor:

I have just finished reading Mr. C. Thomas Moser's article entitled "Too Much Hypocrisy" and must say that it is the finest discussion and analysis of the "Appearance of Fairness Doctrine" that I have read. Well done!!

JOHN B. BEREITER

Auburn

Sue for Courtroom Space?

Editor:

Apropos of your lament in the November *Bar News* about the problems caused by the fact that King County has 34 courtrooms for which 39 Superior Court judges must vie, and without intending to be mischievous, may I draw your attention to the following statutes:

RCW 2.28.139 County to furnish court house. The county in which the court is held shall furnish the court house, a jail or suitable place for confining prisoners, books for records, stationery, lights, wood, attendance [sic], and other incidental expenses of the court house and court which are not paid by the United States.

RCW 2.28.140 Court rooms. If the proper authority neglects to provide any superior court with rooms, furniture, fuel, lights and stationery suitable and sufficient for the transaction of its business and for the jury attending upon it, if there be one, the court may order the sheriff to do so, at the place within the county designated by law for holding such court; and the expenses incurred by the sheriff in carrying such order into effect, when ascertained and ordered to be paid by the court, is a charge upon the county.

The Attorney General has concluded, in AGO 1975 No. 3, that these ancient laws mean what they say and are properly enforced by mandamus. I won't comment about the idea of the King County judges suing King County to provide additional courtrooms, except to say that it might make some case law on the need to fund courts adequately even in lean times. Perhaps King County is already doing something to provide the needed courtrooms. If so, presumably money can be saved by no longer having to supply firewood.

MARK H. ADAMS

Tacoma

Fascinating Friar

Editor:

Having just received and read the December issue of the *Bar News*, and more particularly the tribute to Eddie Friar done by President Welts, I hasten to mention publicly the excellence of that tribute. I do not know Mr. Friar, but as he is portrayed by Mr. Welts, he must be a fascinating man. I can't remember, however, reading as lively, literate and articulate a commentary of this kind; so, my compliments to our Chef.

DAVID A. NICHOLS

Bellingham

Substitute for Affidavit

Editor:

The flap over "practice tips" in the November *Bar News* prompts me to call a practice tip to your attention. Ch. 187, Laws of 1981 allows a statement made "under penalty of perjury" to be substituted for an affidavit in a judicial proceeding. The legislation, sponsored by the Judicial Council, allows the equivalent of an affidavit to be mailed to the client for signature, and then mailed back to the lawyer, all without the need for a notary public. The necessary form of declaration is specified in the statute.

I have found that few lawyers are aware of the new legislation, but they are delighted to learn of it.

KARL B. TEGLAND

Seattle

Avis Discount?

Editor:

I am writing you in regard to the continuing Avis advertising in the Journal.

While I have generally had fine service from Avis, I feel that it would behoove the Journal and Avis to explain in detail that there are rates that Avis does *not* offer discounts to members of the Washington State Bar Association on.

For example, notwithstanding the discount promotion(s), I was denied *any* discount at Montgomery Alabama this summer when I rented the Avis car for two weeks.

The reason given was that I was getting a "Supersaver" rate anyway, and although the distinction as well as the policy behind denying the discount escapes me because the amount paid to Avis is much more than most rental contracts produce anyway, I think that Avis and the Journal ought to set forth in specific detail what rate(s) do *not* entitle Bar members to discounts.

DON M. GULLIFORD

Seattle

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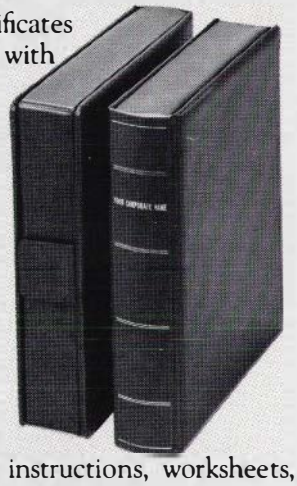

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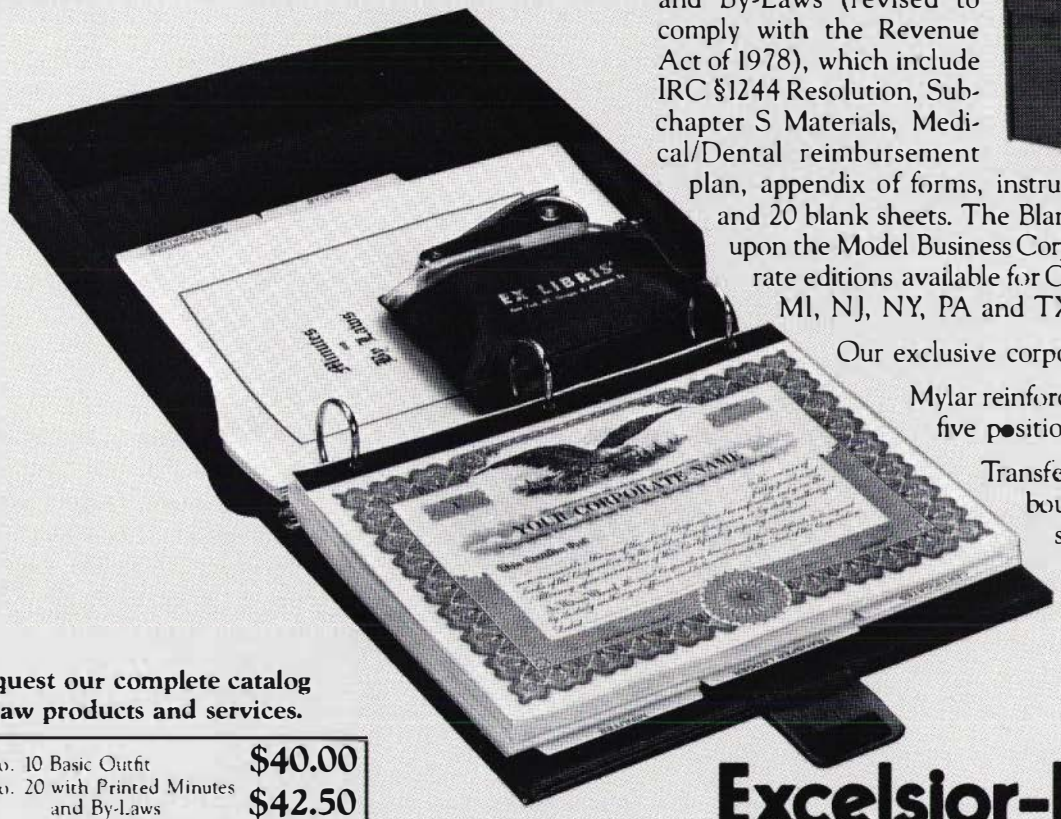

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Surviving the Winter, Surveying the Future

I am writing this in January. Outside, I can see snow slicking up the streets. Passersby trundle along like polar bears. Inside, I am guzzling chicken soup and trying to shake a cold. I love winter.

Winter is particularly tough on lawyers. You who have recently tried a jury case know what I am talking about. One flu-infected juror coughs interminably through your direct examination; another—drowsy with antihistamines—nods off to sleep during closing argument. Your witnesses are congested and red-nosed. The judge is congested and red-nosed. And if you weren't congested and red-nosed at the start of the trial, then by its conclusion you are congested and red-nosed because you have caught the bug which the jury, witnesses and judge all had.

I have tried to take a more positive attitude toward winter. My outdoorsy friends tell me that winter means snow and snow means skiing and skiing means fun. I do not ski. Two summers ago I broke my leg running after a bus. I concluded that if I could break a leg on a dry sidewalk, I had better stay off the slippery slopes. At one time in my life I enjoyed sledding. Few things gave me more pleasure than to bellyflop down a hill at breakneck speeds. I also used to enjoy ice skating on frozen backwater ponds and chucking snowballs at automobiles. Then I went to law school. I studied torts and damages. I became a 'reasonably prudent man'. Winter has been a drag ever since.

* * *

It is appropriate in this issue to give lawyers a sneak preview of what 1982 holds in store for them. Actually, it would have been more appropriate to do that in the January issue, except that my January column was prepared in November when it looked like the world would never make it to 1982.

You can expect some major court rule changes this year. First, in an effort to distribute the burgeoning caseload more evenly among the various courts, the jurisdiction of Small Claims Court will be increased to $10,000 and mandatory arbitration will be expanded to encompass criminal prosecutions (thus eliminating the messy process of plea-bargaining). A proposal is also circulating which would abolish courts of appeal altogether and substitute in their stead direct review by the law journals of Gonzaga, UPS and UW.

The *Bar News* crystal ball shows some major lawyer-related legislation in the offing this year. First, expect an amendment to the Sixth Amendment which will substitute county-wide telephone polls for trials by jury. Trials will be broadcast on cable television and viewers will call in their verdicts. Second, expect this year's legislature to abolish marriage. Obviously, if there is no marriage there can be no divorce—thus, a sizeable portion of the courts' workload will be reduced. Third, the legislature is expected to make the 1981 Products Liability Bill retroactive to 1946. That doesn't make much sense, but then neither do some parts of the bill. Fourth, the legislature will impose a 100% surtax on attorney's fees. This will not only generate income for the state but also encourage potential litigants to solve their disputes through non-judicial means, such as duelling, streetbrawling, lynching, and firebombing.

Some major changes are in store for the Bar Association in 1982: the site of the '82 Annual Convention will be relocated from Vancouver, B.C. to Biloxi, Mississippi; Bar dues will be quadrupled; residency rules will be tightened to require that lawyers live within one square mile of their offices; and a moratorium will be imposed on new admittees to practice. In 1981 the Bar will dissolve its legal department and delegate all disciplinary investigations to the *Seattle Post-Intelligencer*. In an effort to save money, the *Bar News* will be printed on rice paper in 1982. It will be the country's first edible bar journal: read it, then eat it. Some of us at the *Bar News* have had to eat our words from the beginning.

New lawyer-oriented products will arrive on the market in 1982. Larger law firms in Spokane and Seattle will be interested in the soon-to-be-unveiled 'digitalized associates'. These inexpensive micro-computers can churn out canned briefs at the incredible rate of ten per legal issue. They require no office space and never burn out. A voice synthesizer option will be available which will enable the computerized associate to make as many as sixty random evidentiary objections per minute at trial.

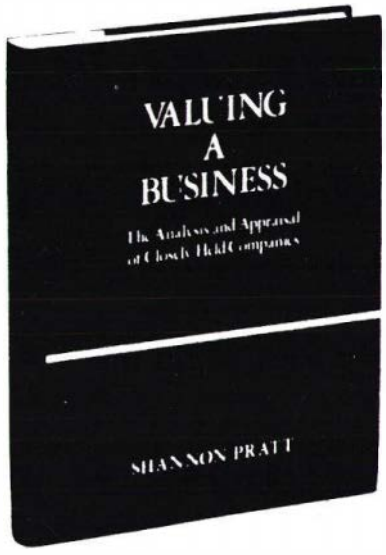
1982 will be a banner year for trial lawyers. New audio-visual trial aids are coming on-line which will make the presentation of testimony more effective. In January of this year, for example, there appeared on the trial scene the so-called "Honest Expert" anatomical chart. The chart, especially designed for cross-examining medical expert witnesses, is a subtly skewed anatomical display of the human body: it shows one rib too many, one vertebra too few; the liver and pancreas are juxtaposed; gorilla femurs are substituted for human femurs; and the thumbs on each hand are shown backwards. For rehabilitating your own witness, a penlight "halo-projector" is also now available. It attaches to the back of your witness' shirt collar and projects an ethereal halo onto the ceiling above his head. Unethical, but very effective.

* * *

We are now at the second set of stars below which my predecessor Jay White believed nobody ever read. For the one or two of you who have made it this far, we at the *Bar News* wish you a happy Washington's birthday and a litigious New Year. May all your pleadings come true.

Everything we know about valuing businesses would fill a book.

And it's a *big* book! 424 pages, 8½ x 11, crammed with information on the theory and practice of business appraisals. It's just been published by Dow Jones-Irwin Co., and it's the most comprehensive book ever written on the subject.



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The President's Corner

Credit Where Credit Is Due

Among the great scientific wonders of this century, no achievements have been more spectacular than those of our nation's space exploration program. A trip through the NASA Space Museum in Houston, Texas, provides a graphic display of the benefits which have resulted in many areas of our lives. For example, much of the life-saving equipment now carried by Medic 1 units was adapted from space program research.

The space programs which have drawn the most public interest have been the manned flights—the Apollo trips to the moon, the flights of the Space Shuttle, and others involving astronauts. It has been of some interest to me that the astronauts taking part in these flights, while being much in the headlines before, during and after their journeys, have consistently emphasized the absolutely essential contributions of the thousands of unheralded engineers, technicians and others who supported each flight operation.

Let's apply this last thought to our own Washington State Bar Association. Our State Bar membership growth has been explosive during the past decade, increasing by almost 150% to 11,000 members. The visible leadership—the President and Board of Governors, as well as the chairpersons of our some 5 dozen committees and sections—has become involved in increasingly complex programs which serve expanding membership needs.

Something we do not often recognize is that the tremendous support by an experienced, dedicated Bar Staff makes all of these programs possible. Without these continuing, superb efforts by the men and women in the Bar Office, most of our programs would falter. In fact, most of them would stop.

Our Bar Staff is comprised of 34 employees, approximately ⅔ of the number typically on staff at other state bar associations of comparable size.

Our staff is comprised of career-oriented people who consider the Bar Association as their chosen work, not just a stepping-stone to other employment. They are dedicated professionals. For example, the Executive Director, General Counsel, Director of Continuing Legal Education, Director of Public Affairs, and Director of Administration and Programs—5 people—have between them an aggregate of 37 years of bar staff experience, nearly all of it with our Bar Association. And, we have named only the Executive Director and Department heads. We could include an equal number of other staff members with equally lengthy experience.

The point is that we are blessed with a loyal, competent crew that is able to keep our Bar moving in the right direction, no matter how complex the assigned course. They have successfully met every new challenge, no matter how serious, how novel or how threatening, during the past 5 years that I have been a close, continuous and involved observer of the inner workings of our Association. One result is that our State Bar has developed a national reputation for such programs as bar exam administration, mandatory continuing legal education, a firm but fair disciplinary program, a respected monthly bar publication, and many other innovative programs. We are considered to be the best. Go to any state or national convention and ask about the quality and reputation of the Washington State Bar Association.

While the Board of Governors makes the assignments, much of the impetus for the development of these programs has come from the resourceful minds of the staff. The Board characteristically does not assign projects according to the ease with which they can be accomplished. It is often rather like the story of the architect speaking to the engineer, where the architect says, "This is my idea—it's up to you to build it."

I can assure you that we are fortunate to have a team of creative implementers and builders on our Bar Staff. They get the things done that help us practice better, improve the overall effectiveness of the legal process, and deliver a higher quality of service to the public. I know and would say under oath that many of our staff are compensated at a level below that available to them in the marketplace. Several of our staff have refused attractive job offers elsewhere out of what I construe to be a belief in the worthiness of our work on behalf of the public and a loyalty to that endeavor.

The next time you make contact with a member of our Bar Staff, let him or her know that you appreciate those qualities.

Keep the Scales of Justice balanced-in your favor!

Malpractice lawsuits are rising at an alarming rate with settlements to match. The attorney's optimum recourse for keeping justice balanced is to be adequately covered by professional liability insurance.

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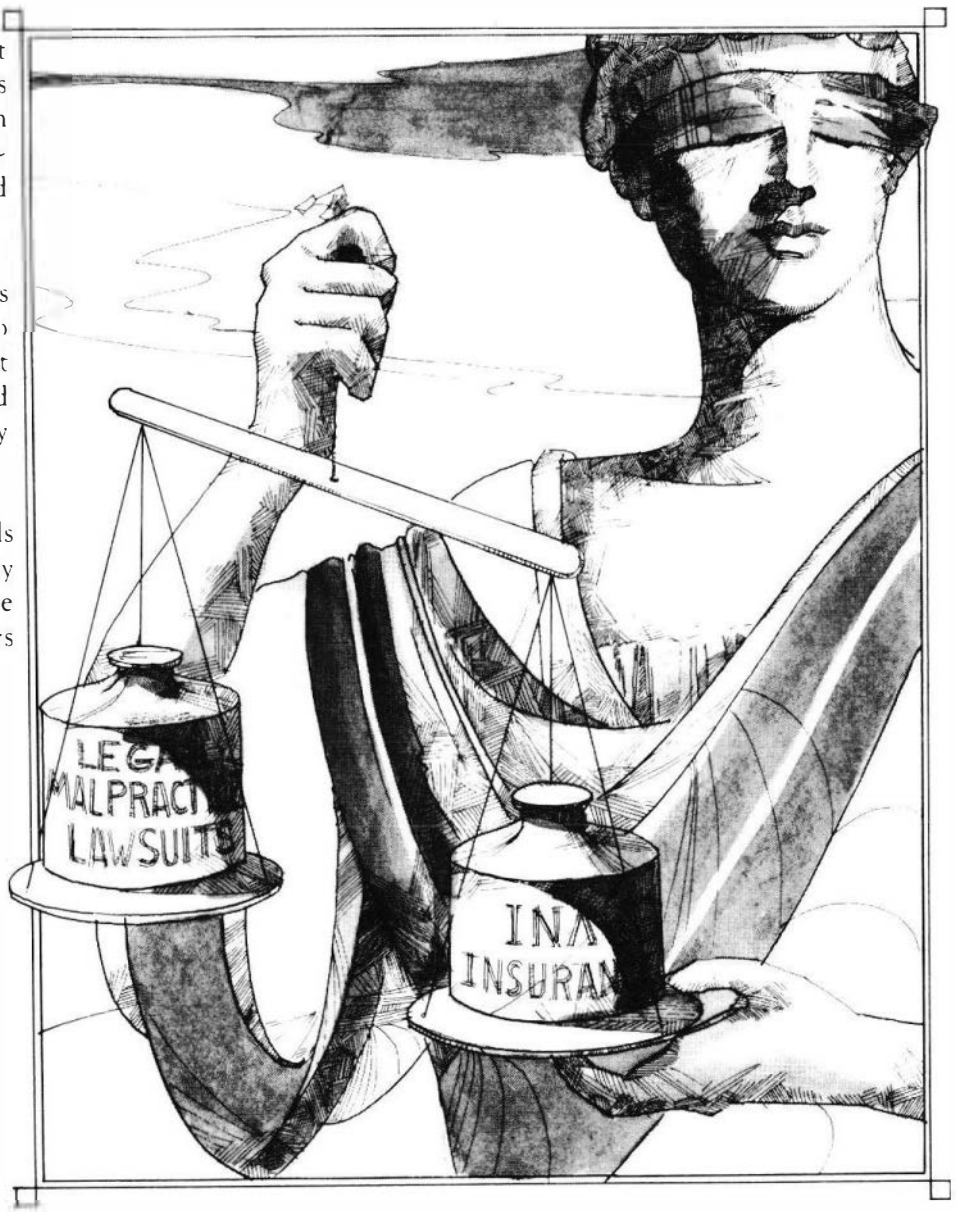

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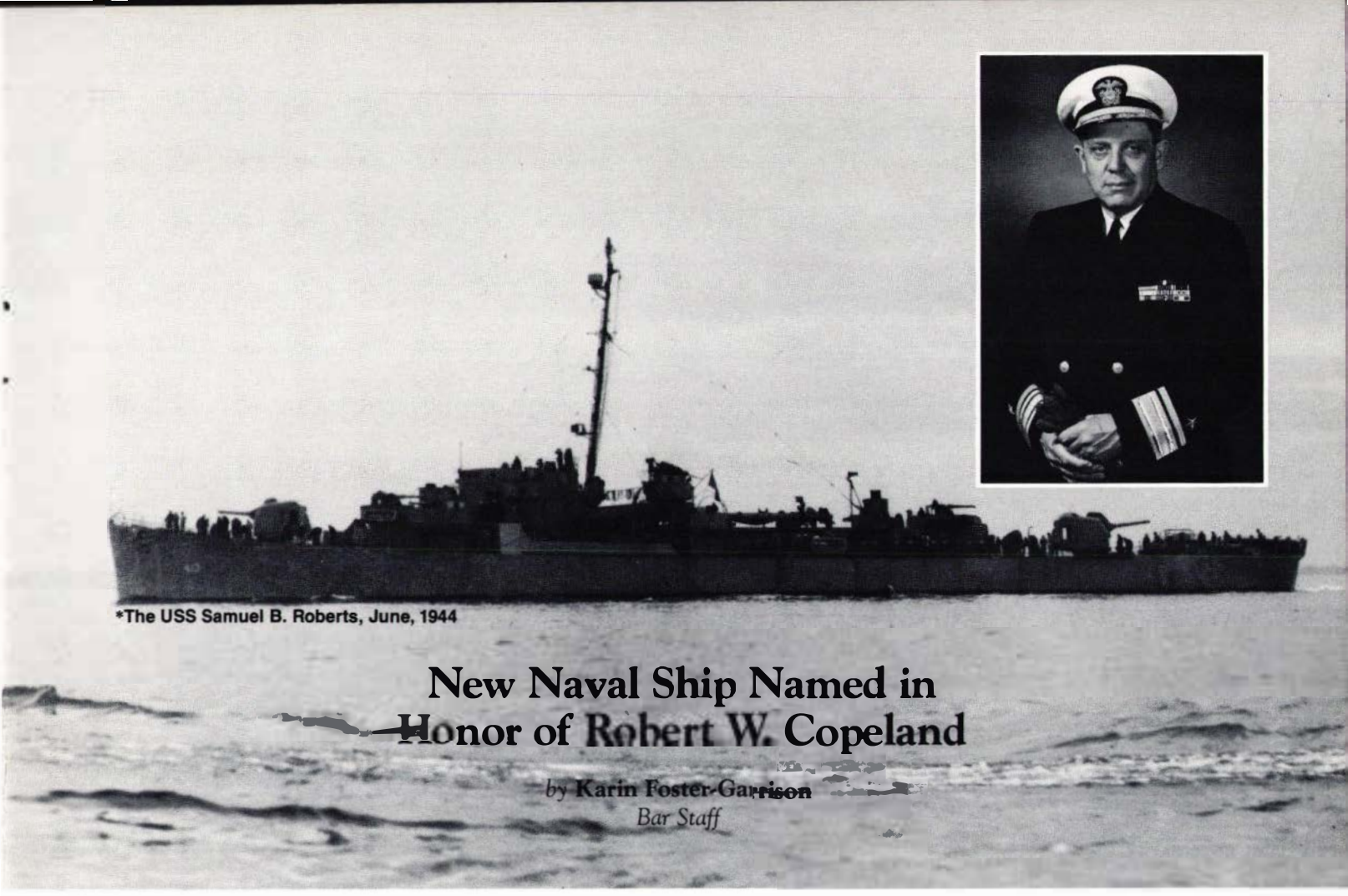

*The USS Samuel B. Roberts, June, 1944

New Naval Ship Named in Honor of Robert W. Copeland

by **Karin Foster-Garrison**
Bar Staff

The late Rear Admiral Robert W. Copeland, a respected Tacoma lawyer who was a member of the Washington State Bar Association for more than thirty-eight years, has been remembered with an unusual and distinctive honor for his heroism and service in the U.S. Navy in World War II.

A newly built guided missile frigate has been christened in his name.

Copeland distinguished himself as Commanding Officer of the *USS Samuel B. Roberts* during the Battle Off Samar Island, Philippines, on October 25, 1944.

The Battle Off Samar Island was one of four major battles and a series of lesser actions known collectively as the Battle for Leyte Gulf, a confrontation that has been described as "for complexity and magnitude without parallel in naval history."

Riding a wave of victory, American forces landed on Leyte Island on the morning of October 20, 1944. For two months they had been extremely successful against the Japanese in the Philippines, crushing enemy bases from Mindanao to Luzon.

Meanwhile, the Japanese were launching a counterattack. On October 22, 1944, in defense of the Islands and with hopes of changing the course of the war, four separate Japanese fleets set out for Leyte Gulf in an attempt to thwart American efforts.

The first and second engagements resulted in disproportionate losses to the Japanese, including the sinking of two Japanese battleships. But on October 24, a diversionary fleet succeeded in luring American sentries from their guardpost in the San Bernardino Strait, and near midnight a single-column formation of 22 Japanese ships slipped through, then south off Samar Island toward their target area.

Under the command of thirty-four-year-old Lieutenant Commander Robert W. Copeland, the *USS Samuel B. Roberts* (*Sammy B.* to the crew) was one of four destroyer escorts and three destroyers that were protecting five small aircraft carriers in Leyte Gulf.

It was just after sunrise when the Japanese fleet of two super-battleships, nine heavy cruisers and a number of destroyers pounced upon the task unit with no warning. A carrier was hit, broken in two and sunk, and as shells rained all around, the alert was sounded.

"Fellows," Copeland informed his crew over the ship's speakers, "this is going to separate the men from the boys."

Immediately, U.S. destroyers and destroyer escorts were ordered to lay smoke screens to protect the carriers. Enemy fire slackened. And as if directed by Providence, the task unit entered a rain squall which lasted for ten or fifteen minutes and further blocked visibility to the

Japanese.

But the camouflage was a temporary defense at best and counteraction was urgently needed. All destroyers were ordered to make torpedo runs on the Japanese cruisers, a highly unusual order in broad daylight. When the three destroyers—two of which later sank—had completed their runs, the destroyer escorts were ordered to follow their lead.

"After waiting about five minutes for some indication that other DEs were forming for an attack, and finding none," reads Copeland's report, Lieutenant Commander Copeland made the first move, passing through the billowing smoke and lightning flashes of the big guns. Shiphandling was perilous, but for 40 minutes the *Sammy B.* fired at ranges from 6,000 to 7,500 yards, "deliver(ing) the heaviest, fastest and most accurate fire of which the Roberts . . . was capable," Copeland later wrote.

Due to some confusion in radio communications, the *Sammy B.* was the only escort which heeded the order to deliver a torpedo attack. Against amazing odds, Copeland and his crew succeeded in inflicting considerable damage to the enemy fleet, disabling one Japanese cruiser, and in successfully diverting large caliber fire away from the carriers to their own ship.

The *USS Samuel B. Roberts* braved two-and-one-half hours of continuous bombardment, enduring more than 20 hits before she was beaten. Copeland passed the word to abandon ship, and suffering from a concussion, he made the rounds to search for injured crewmen.

For the next two days and nights, the men floated on two liferafts and on floating nets attached to the rafts, and were almost mistaken for Japanese before they were rescued.

In the end, 89 crewmen were lost, including seven of the fifty wounded who died while in the water. There were 128 survivors.

As a tribute to the courage of the crew of the *Sammy B.*, the U.S. Navy commissioned a second ship named *Samuel B. Roberts* in December, 1946.

Copeland was awarded the Navy Cross, the Navy's highest honor, "for extraordinary heroism" in the Battle Off Samar Island, the Purple Heart Medal for wounds received in enemy action, and was entitled to wear the ribbon for the Presidential Unit Citation awarded the task unit.

"Although his ship was lost in this engagement," reads the citation which accompanied the Navy Cross award, "his heroic actions were instrumental in turning back, thoroughly crippled, a vastly superior enemy force. His extraordinary courage and magnificent spirit in the face of terrific odds will live forever in the memory of the officers and men who served with him that day. His conduct was in keeping with the highest tradition of the

Navy of the United States."

* * *

Robert Witcher Copeland was born in Tacoma on September 9, 1910. At the age of 18, he enlisted in the Naval Reserve and joined the NROTC at the University of Washington, where he earned his B.A. in business administration. Copeland graduated from the University of Washington Law School and became a member of the Washington State Bar Association in 1935. That same year he was commissioned as an Ensign. He practiced law in Tacoma until called to active service in 1940, just 13 months before Pearl Harbor.

During his six-year tour, Copeland commanded four vessels, the *USS Pawtucket*, the *USS Black Douglas*, the *USS Wyman*, and the *USS Samuel B. Roberts*. He was released from active duty in 1946, but remained active in the Naval Reserve, advancing in grade to Rear Admiral in 1961. He was the first University of Washington graduate to achieve flag rank. Copeland's other honors included the Naval Reserve Medal, the Asiatic-Pacific Service Medal, and the Philippine Liberation Medal. While in the Reserve, he served on Selection Boards, was a member of the Naval Reserve Evaluation Board, and in 1958 was the only Naval Reserve officer to accompany the U.S. Chief of Naval Operations on an inspection of NATO bases in Europe. Copeland retired from the Naval Reserve in 1970.

Following his separation from active duty, Copeland returned to his law practice in Tacoma. Among many public service activities during his professional career, he served on the WSBA Public Relations Committee, was elected to two terms on the Tacoma School Board, serving for a time as president, and was elected to the Port of Tacoma Commission.

Copeland died in August of 1973.

* * *

The *USS Robert W. Copeland* is the sixth of a series of thirteen guided missile frigates to be built forthe Navy by Todd Pacific Shipyards, Los Angeles Division. The ship is 445 feet long, with a full load displacement of 3,600 tons, and will travel at speeds in excess of 28 knots. It is designed to carry a missile launcher, two anti-submarine helicopters, one rapid fire gun, and anti-submarine torpedoes. It will be manned by a complement of 17 officers and 168 enlisted men.

Mrs. Robert (Harriet) Copeland served as sponsor at the christening of the *USS Copeland*, assisted by her daughter, Mrs. Richard R. (Suzanne) Hartley. Her son Robert W. Copeland, Jr., also attended.

The *USS Copeland* is scheduled to be commissioned early this year. It will be a fitting tribute to a man who will long be remembered for distinguished military and legal careers. □

Constitutional Amendment by Convention — a Risky Business

by **Richard W. Hemstad**

How would you like to be a delegate to a national Constitutional Convention? Would future historians view you as this generation's Madison, Jefferson or Hamilton? Far-fetched? Perhaps. But since 30 states have now made application for a Constitutional Convention and only 34 are required to trigger the constitutional directive to the Congress to call a Convention, the issues presented are real and important. How they are resolved can have potentially profound impacts on the public interest.

We have reached this critical stage as a result of a quiet, nation-wide campaign to have the Constitution amended to require the Congress each year to achieve a balanced federal budget. While balancing the federal budget may be a laudable objective, the question is presented whether the calling of a Constitutional Convention to obtain that objective is a desirable way to proceed. At its December meeting our Board of Governors concluded it is not and adopted a position opposing such a call. This conformed with a resolution adopted in September by the Bar Association convention meeting in Vancouver.

Lawyers have an obvious, legitimate stake in the process by which constitutional change is achieved. Understanding the constitutional and policy issues presented by the campaign for a balanced budget is important if the Bar is to carry out its historic role of participating in the resolution of issues of significant state and national interest and of raising the public awareness of those issues.

Richard W. Hemstad is professor of law at U.P.S. Law School and a state senator from the 22d District in Thurston County. He earned his J.D. at the University of Chicago.

Article V of the United States Constitution provides two alternative methods for constitutional change: 1) the Congress, upon a two-thirds vote of each house shall propose amendments; and 2) "on the application of the legislatures of two-thirds of the several states," the Congress "shall call a Convention for proposing amendments." In either case, any amendments proposed shall be valid when ratified by three-fourths of the states by either their legislatures or by state conventions, the mode to be determined by the Congress.

All 26 Amendments to the Constitution have been adopted through the use of the first alternative. While throughout our history the possibility of using the convention alternative has from time to time been addressed, in recent years, particularly with the rise of single-issue political movements, renewed interest has again been focused on the convention alternative. Thus, in recent years serious proposals have been made that a Constitutional Convention should be called to address the issues of one-person one-vote, prayer in public schools, abortion and, currently, a balanced federal budget.

In Washington State the balanced budget issue was addressed in the 1981 legislative session in the form of Senate Joint Memorial 105 and House Joint Memorial 1. SJM 105 passed the Senate by a vote of 38 to 10 with certain restricting amendments. It was aggressively pushed in the House but never came to a vote on the floor of the House. HJM 1 passed the House by a vote of 71 to 26 without amendment but was not further addressed in the Senate since attention focused in the House on the Senate's amended version. The proposal having passed both Houses in different forms, it can be anticipated the issue will surely arise again in the 1982 Session.

Both SJM 105 and HJM 1 in their original form petition the Congress to prepare and submit to the several states a constitutional amendment—

> "requiring in the absence of a national emergency that the total of all Federal appropria-

tions made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year."

In the alternative, the memorials request that the Congress "call a Constitutional Convention for the specific and exclusive purpose of proposing an amendment" in the identical form of the language quoted above. The memorials then attempt to prevent a so-called "runaway" convention by further providing that the application will "be deemed null and void, rescinded, and of no effect in the event that such convention not be limited to such specific and exclusive purpose."

The proponents of these memorials concede that the Constitutional Convention device is being used to force the Congress to submit a balanced budget amendment to the States to avoid the triggering of a Constitutional Convention. Because, it is argued, Congress will act in time the public need not be concerned about the problems which would come with a Constitutional Convention and that, in any event, any amendments forthcoming from such a Convention would still have to be ratified by three-quarters of the States.

In contrast to the casual process followed in many States, hearings in Washington were held in the 1979 legislative session and again in 1981. But at those hearings most of the attention understandably focused on the desirability of requiring Congress to balance the federal budget and generalized objections to the calling of a Convention. Minimal awareness, both among legislators and the general public, has yet developed as to the complexities of the Constitutional Convention process and the seriousness of the issues we will face if the 34-state trigger is reached.

The Purpose of Article V

The Constitutional Convention of 1787 only relatively late in its deliberations gave any serious consideration to the issue of how to achieve constitutional change. The issue was first addressed in the Thirteenth Virginia Resolve which would have excluded the Congress from any involvement in amending the Constitution. The premise of this proposition was the fear of a potentially oppressive federal government and that, accordingly, constitutional change should be exclusively a matter for the States. On the other hand, the counter-concern raised was that the States would, with the power to propose and adopt specific amendments, over a period of time use that power to destroy the delegated powers of the federal government.

These dual concerns were addressed in the evolutionary development of what became Article V. In its final form, Article V is another excellent example of how the Convention built checks and balances into our constitutional system: The Congress is given the power to propose *specific amendments*, a power not granted to the States; but the States have the exclusive power to initiate a *Constitutional Convention* to check a Congress become oppressive.

Many of the issues that could be raised with regard to congressionally initiated amendments have been resolved with the long history of custom and precedent in the use of that mechanism. But the quite inadequate description in Article V of the process for the calling of a Convention raises an array of legitimate issues concerning the appropriate procedures to be followed in its implementation.

Although it is impossible to predict the sequence of events which would occur if the 34-state trigger is reached in the present debate about a balanced federal budget, various plausible scenarios of what could occur suggest the threat of serious confrontations among the States, the Congress, the Supreme Court, and any Convention which would be assembled.

The Procedural Steps in the Convention Process and Some of the Potential Issues Posed

Article V provides for five distinct steps in the Convention process. They are: The application to the Congress by the States, the call of the Convention by the Congress, the meeting of the Convention itself, the choosing by the Congress of the mode of ratification, and the ratification process. A variety of political and legal

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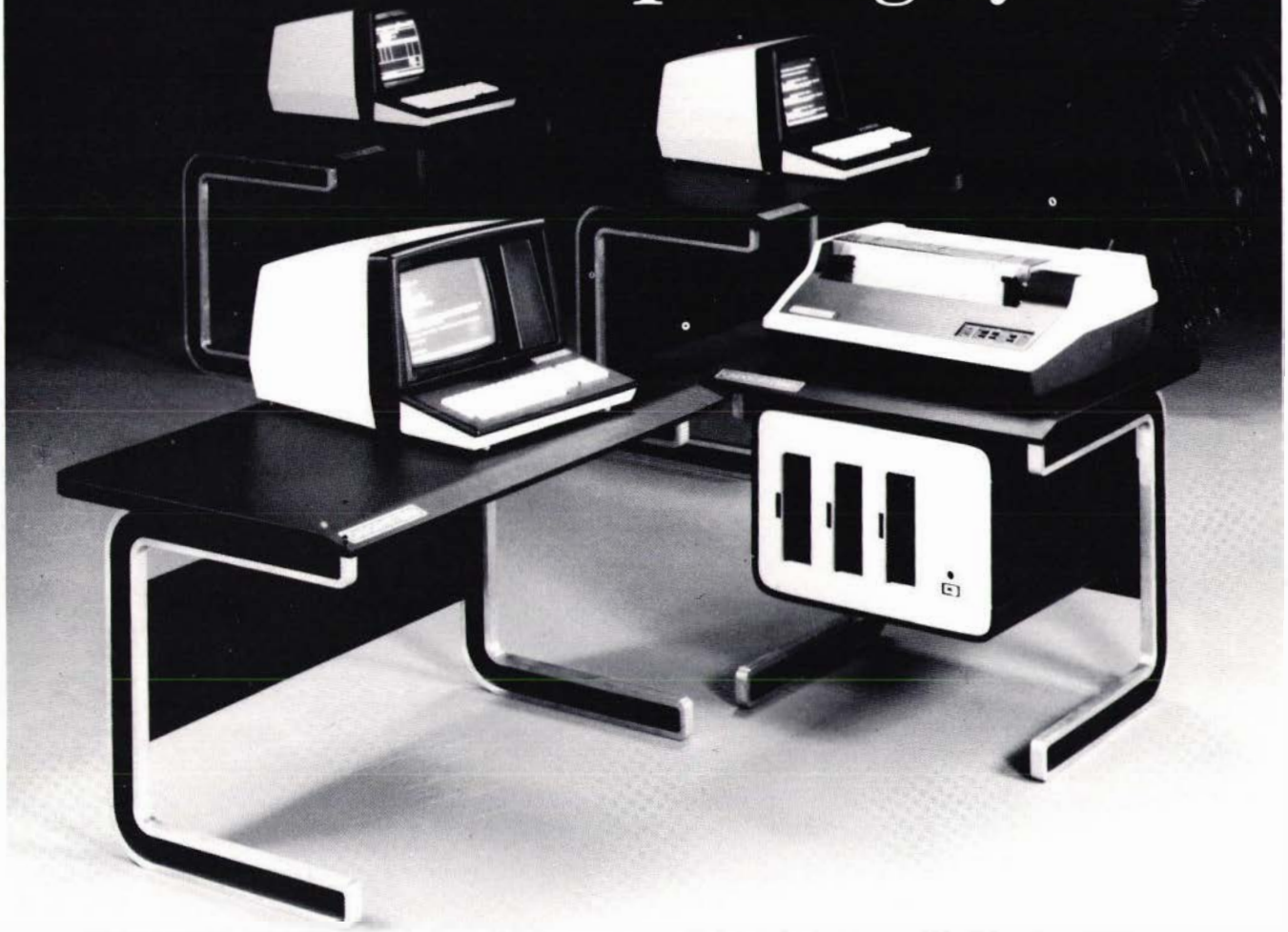

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issues are raised in each of these steps in the process.

The important conceptual question posed in the application stage is whether a request for a Constitutional Convention for the sole and exclusive purpose of adopting the balanced budget amendment is an "application" within the meaning of Article V. A Convention whose duty would be only to accept or reject a specific amendment proposed by the states would have no opportunity to debate, negotiate or compromise, functions which are considered to be the essence of a "Convention." Most constitutional scholars have taken the position that a very specific application requiring a "yes-or-no" vote on the text of a particular amendment is hardly the kind of "application" falling within the meaning of Article V. That is the position taken by the American Bar Association in 1973 based on the report of its Special Committee appointed to study the Constitutional Convention issue.

But the argument that a narrow application is invalid does not necessarily apply with equal force to one requesting a limited Convention but with a broader scope that would provide the opportunity for debate and dialog within the Convention. While the American Bar Association study concluded that a Convention could in this manner be limited, there is clearly no consensus on this critically important issue among Constitutional commentators.

Numerous other issues are also posed in the application stage. Some of them include: May the petitions to Congress be adopted by only a majority vote in each house of a legislature, or by a two-thirds vote? May a stage governor veto an application to Congress? When does an application lapse? May a state rescind its application? May a voter referendum be considered an acceptable application?

If Congress were to receive 34 applications for a Convention to adopt a balanced budget amendment, it would have four choices available to it. First, it could decide that the requests, being too narrow, are not in fact "applications" and therefore either ignore them or return them to the States with an explanation. Second, it could honor the specific constraints found in the balanced-budget applications and call a Convention for that purpose. Third, it could ignore the specific language of the applications and issue a call for a Convention limited in scope but broader than the narrow requests of the balanced budget applications. Fourth, it could ignore any constraints and proceed to issue a call for a general and open Convention.

Consider the dilemma the Congress would face. To ignore the applications on the ground they are too narrow or technically insufficient would only reinforce the belief that fostered the applications in the first place of an arrogant, unresponsive Congress. To issue a call for a narrowly limited Convention would appear to violate the premises of Article V and would direct the Convention to address a proposal which on the merits raises serious conceptual and practical difficulties. And to issue a call for a Convention with a broader scope (such as addressing the taxing and spending powers of Congress) would not honor the applications of the States.

Assuming that Congress were to issue a call, a host of additional questions would then be posed. Some of these include: How will delegates be selected? Are the states to be equally represented as they were in 1787, or does the one-person one-vote standard apply, or does the electoral college voting standard apply? Will the delegates be paid? May they be recalled? May the internal procedures of the Convention be directed by the Congress?

Once a Convention convened, the critical question which would almost certainly be raised would be whether any constraints placed upon the Convention either by the Congress or by the States would be binding. The precedent commonly cited is that of the Constitutional Convention of 1787. That Convention was called by the Congress to address the need for amendments to the Articles of Confederation. Those instructions, it is generally asserted, were promptly ignored as the delegates proceeded to write a whole new Constitution.

If efforts to expand the scope of the Convention were to occur there would surely be extended public debate about whether any State or congressionally imposed constraints were legal impediments or merely moral exhortations. Once assembled, it would be argued, the Convention would have the right to speak for the people. In turn, if such steps were taken to expand the Convention's agenda the question is further posed whether the Congress, the States or the Supreme Court could then step in to constrain the Convention from acting beyond its authority.

At the conclusion of the Convention it would presumably report back to the Congress for purposes of the Congress carrying out its Article V responsibility to select the mode of ratification and to submit to the States any amendment or amendments. The question surely to arise, if the Convention had arguably exceeded its powers, is whether the Congress could refuse to submit the amendment or amendments to the States for ratification. Other questions include: What period of time would be permitted for ratification? Could a State rescind a ratification once made? Would the President participate in the ratification process with the opportunity to exercise the veto power?

The Role of the Supreme Court

The importance of the issues surely suggests that legal challenges would be brought at various stages of the convention process. The spare wording of Article V sheds minimal light on how the Supreme Court would react to the legal disputes which could be raised. And,

the convention process never having been used, there are no precedents addressing those issues.

The Supreme Court could refuse to involve itself on the ground that the Article V process is a "political question" solely for the Congress to determine. While that position has been forcefully argued with respect to the Congressionally initiated amendment process, see Justice Black's concurring opinion in *Coleman v. Miller*, 307 U.S.433 (1939), the rejection of the political question argument by the more activist contemporary Court suggests it would, while being deferential to policy decisions made by the Congress, find various of the process issues justiciable. Thus, for example, if the Congress refused to call a Convention when the requisite number of States had so requested, or to submit an amendment for ratification upon the conclusion of a Convention, it would surely be difficult for the Court to assert, in the "political question" context, that it had no authority even to address such questions.

Assuming the Court were to determine at least some aspects of the Convention process justiciable, the kind of remedy the Court would order is another question. While, for example, it could conceivably issue a coercive writ of mandate against the Congress, it also could more cautiously declare what it considered to be the constitutional duty of the Congress without seeking to coerce the Congress to act.

The Role of the Congress

Understandably, the Congress over the years has been reluctant to address in the form of legislation the mechanics of a Constitutional Convention. Its reluctance results in part because of the difficulty of the issues raised; in part because of the concern that the very enactment of such legislation will tend to encourage calls for a Convention, an event that many members of Congress hardly look upon with enthusiasm; and in part, because one Congress cannot bind its successors, the issue is arguably premature until the 34-state trigger is actually reached.

Former Senator Sam Ervin sought to address some of the issues posed in the form of his proposed Federal Constitutional Convention Procedures Act. That bill passed the United States Senate in both 1971 and 1973. Both times it failed to pass the House. Currently hearings are again being held with attention now focused on S.817 introduced by Senator Hatch. Both bills assume a Convention can be limited and attempt to assure they would be. The Ervin bill would completely foreclose judicial review and give the Congress final authority over any disputes, while the Hatch bill provides for judicial review. The Ervin bill would require delegates to be elected in each State in the same manner as Senators and Representatives in the Congress are elected. The Hatch bill, on the other hand, would leave the method of

selection of delegates to each State and assign the number of delegates as the number of Senators and Representatives to which each State is entitled in the Congress. Needless to say, the policy and constitutional issues posed will make adoption of any such legislation difficult to achieve.

Some Concluding Remarks

While one cannot with any confidence suggest what will be the likely course of events if the 34-state trigger is reached with respect to a call for a balanced budget convention, some generalized conclusions about the desirability of using the limited Convention process may be helpful.

1. The drive for a balanced budget Convention, with typical State petitions having an extremely narrow focus on a specific amendment, would seem to violate the premises of Article V. This approach would permit the States both to *propose* and then to *ratify* a specific amendment, thereby violating the concern of the Founding Fathers that the States not have the capacity through the ability to propose specific amendments to thereby emasculate the power of the federal government.

2. The lack of adequate description of the process to be followed for the calling of a Convention and for its operation will unavoidably generate a series of political and legal disputes which could lead to a period of significant instability in the American political system at a time of substantial domestic and international risk. The issue is surely presented whether those risks are justified or whether the alternatives of the ballot box and Congressionally-initiated amendment are not preferable.

3. The attempt through legislation to reduce the areas of uncertainty and provide guidance to the States as they submit applications to the Congress is laudable. But the enactment of a statute that does not inappropriately intrude upon the responsibilities of the States, any Convention called, and the Supreme Court will be exceedingly difficult to accomplish because of the unavoidable self-interest the Congress has in the process.

4. A process commenced with relative lack of public awareness, sold on the premise of having a limited scope, but having the seeds within it for immense pressures to expand to other subjects, is surely a questionable way to address public policy issues under the best of circumstances. If a Constitutional Convention is to be called, it should be preceded by general public understanding of the risks and issues which may result.

5. The Bar has the opportunity to perform a significant public service on the issue of whether a Constitutional Convention should be called. By becoming actively involved the Bar can provide guidance to both the legislature and the public on a matter of critical importance to the public interest. □

A Change in the Official Law Reports: Nonprofit State Distribution

by **Richard F. Jones**

For the first time in more than 85 years a major change is being made in the method of pricing and distributing the official law reports of the Washington appellate courts. On April 1, 1982, the state will terminate its contract with Bancroft-Whitney Company for the marketing and distribution of the Washington Reports and Washington Appellate Reports. Those functions will be performed through facilities already existing within the judicial system at a considerable benefit in cost and efficiency to the users of the official reports.

Although the editorial processing and headnote writing have always been performed by the state Reporter of Decisions under the supervision of the Supreme Court, and the printing and binding have always been performed by the Public Printer, Bancroft-Whitney Company has, since 1895, distributed the reports and collected the subscription charges. The effect has been a commercial image and a private profit in what is otherwise a state operated nonprofit procedure.

Background

The state constitution provides that the opinions of the Supreme Court shall be free for publication by any person, but also requires the legislature to provide for speedy publication of the opinions, and requires the Supreme Court to appoint a "reporter for the decisions of that court."[1] In 1895, the legislature provided that the Supreme Court reports should be published under the supervision of the Supreme Court and Reporter of Decisions "by contract entered into by the reporter with Bancroft-Whitney Company."[2] That act also authorized the Secretary of State to sell to Bancroft-Whitney the stereotype plates to volumes I to 9, and from that time to the present Bancroft-Whitney has, under a series of legislative enactments and contracts, distributed and marketed the official reports. Also, until 1969, Bancroft-Whitney had exclusive control of the supply of previous volumes of the reports.

In 1943, the legislature created the present system for supervision of the publication of the official reports. A commission was established consisting of the Chief Justice of the Supreme Court, the Reporter of Decisions, the State Law Librarian, the Public Printer, and a representative of the Washington State Bar.[3] The Commission was authorized to determine all matters relating to printing, binding, sale, and distribution, and to contract for the performance of any or all of the

Richard F. Jones has been Reporter of Decisions for the Supreme Court of Washington since 1960. He is a member of the Washington and Kansas bars.

[1]Const. art. 4, §§ 18, 21.

[2]Laws of 1895, ch. 55, p. 97.

[3]Laws of 1943, ch. 185, p. 576. The statute was amended in 1971 to add a judge of the Court of Appeals.

mentioned functions. The result of this act was that the Reporter of Decisions continued to edit the reports, the Public Printer continued to print and bind the reports, and Bancroft-Whitney continued to market and distribute the reports, but the contracting party on behalf of the state was now the Commission on Supreme Court Reports instead of the Reporter of Decisions.

In 1968, the Commission was informed by Bancroft-Whitney that it no longer would maintain an inventory of previous volumes of the Washington Reports, and that it desired an increase in its compensation for distributing current volumes and advance sheets. The Commission's primary concern at that time was the continued availability of the previous volumes of the reports for the courts and lawyers of the state. The Commission had no funds available to buy the existing inventory, and no means to pay for future reprinting. After discussions with other publishers and a consideration of all feasible alternatives, the Commission decided in 1969 to purchase Bancroft-Whitney's inventory and to pay for it over a 10-year period through sales. Bancroft-Whitney agreed to finance reprints necessary during the period, and those funds would also be repaid through sales of the previous volumes. In return, Bancroft-Whitney received an exclusive right during the repayment period to distribute the current volumes and advance sheets at an increased mark-up.

Later in 1969, the Court of Appeals was established, and its reports were included in the distribution contract with Bancroft-Whitney.

Reasons for State Distribution

As the end of Bancroft-Whitney's exclusive distributorship approached, the Office of the Reporter of Decisions, under the direction of the Commission and the Supreme Court, made a comprehensive study of the general question of distributing state reports and the options available to this state. It was determined that 39 states and territories had official reports, some printed and distributed by the state concerned and others privately printed and distributed. Only Washington printed its own reports and then contracted for distribution services. A review of the functions involved in distribution, such as maintaining subscription lists, keeping subscriber accounts, and providing mailing labels, together with a consideration of the equipment available at that time, disclosed that distribution was not a task beyond the capabilities of existing state agencies, and that the actual cost of distribution would be considerably less than the compensation being paid to Bancroft-Whitney and passed on to the subscribers as part of the subscription price.

During this same time, the Judicial Information System (JIS) was created within the Office of the

Administrator for the Courts to provide computer services to the courts of this state. It was determined that JIS computer support for distribution of the official reports could be provided at a reasonable cost.

In 1981, the Supreme Court and the Commission considered new distribution proposals from Bancroft-Whitney and two other law book publishing firms, and from two accounting firms. The Court and the Commission also considered a proposal for the Reporter of Decisions to distribute the reports using JIS computer services and a revolving fund within the State Treasurer's Office. It was determined that state distribution was in the best interest of the courts and subscribers of the state, and the date of April 1, 1982 was established for implementation of the change.

The New System

This new system of distributing the reports will have no effect on the reports themselves. The reports will be edited and manufactured in the same manner as in the past, with the same format, type size, content, and general appearance. The only differences apparent to the users of the reports will be that they will deal directly with the Reporter of Decisions in the State Law Reports Office for subscriptions and purchases, and the price of the reports will be reduced.

The legislature has directed that the Commission establish a price "as nearly as may be equal to the cost of such publication and the expenses incidental thereto."[4] Under the present system, the private profit of Bancroft-Whitney is included as an expense of publication. Under the new system, however, only direct manufacturing and administrative expenses will be considered in establishing the price. This is particularly significant in the light of the fact that modern word processing and printing techniques applied by the Reporter of Decisions and the Public Printer have actually reduced the cost of manufacture over the last several years in the face of continuing inflation. The Commission expects that a moderate reduction in prices at the time of the change will be followed by further reductions as experience establishes the costs of distribution more precisely.

In order to comply with the constitutional prohibition against the lending of state credit, some changes will be made in the billing procedures. As is customary with advance sheet subscriptions generally, subscriptions to the advance sheets of the official reports will be payable in advance. Bancroft-Whitney presently bills subscribers for the preceding 6-month period, so before the change is made to state distribution there will be one billing combining charges for past and future advance sheet service. Current bound volumes will continue to be sent to subscribers with the understanding that payment will be remitted upon receipt of the volume.

Single copies of advance sheets, isolated sales of current volumes, and previous volumes will be shipped upon receipt of payment. The Commission will also sell previous volumes to law book publishers or other entities who wish to resell them to practitioners as part of a library package or on a time payment basis.

Administration of the new distribution system will be handled by the State Law Reports Office in Olympia. A separate telephone and address will be established for communications concerning the reports. Immediate information and problem solving will be possible since the person answering the telephone in Olympia will have direct and immediate access to the computerized subscription information.

Both the Supreme Court and the Commission believe that this change will more closely implement the legislative intent that the decisions of the appellate courts of this state be made available to the Bench and Bar of the state "at cost." It is also their intent that reasons for the change and the details of the new system be fully communicated to all interested persons. Questions and comments on any of these matters are invited, and should be addressed to the Reporter of Decisions at the Supreme Court in Olympia. □

[4]RCW 2.32.170.

WASHINGTON STATE BAR NEWSLINE

The Board's Work

by **Steven A. Reisler**

WALKING ON HOT COALS: *HAGEN & VANCAMP V. KASSLER* Olympia, January 15 & 16—The Washington State Supreme Court's November 5, 1981 decision in *Hagen & VanCamp, P.S. v. Kassler Escrow, Inc.*, 96 Wn. 2d 443 has opened a Pandora's box. The decision, which held RCW 19.62 to be unconstitutional, had the apparent effect of removing from laypersons the authority to select, prepare and complete real estate conveyancing instruments. The *Kassler* decision goes to the heart of questions important to every practicing lawyer, namely: What is the practice of law? Who defines it? Who is authorized to practice?

Since the decision came down in November, lawyers, banks, trust companies, escrow agents and title companies have appealed to the Board of Governors to do something about *Kassler*. The quandry faced by the Board is—do what? when? and how?

In formulating its response to the *Kassler* decision, the Board must first decide whether it should address the underlying issue of the 'unauthorized practice of law' in a piecemeal or comprehensive manner. It also must decide whether to act quickly to solve the immediate problems posed by *Kassler* or follow a more deliberate course. In late December Bar President David Welts created a special task force chaired by David Hoff to study Kassler and its ramifications.

Approximately 75 interested persons attended an open discussion session of the Board of Governors on Saturday, January 16th. In the opinion of those attending (a cross-section of lawyers, laypersons, escrow agents, bank and title company representatives), the Board should take immediate action . . . if not sooner. These were among the voices heard at the open discussion session:

- Seattle attorney Paul Cressman told the Board and assembled persons that the scope of the special task force should be expanded to deal with the larger issue of the 'unauthorized practice of law' by laypersons. Cressman warned that the larger issue will have to be addressed sooner or later, and a piecemeal approach to Kassler could make a comprehensive solution to the problem more difficult.

- Jackie Sankey of Terrace Escrow, Seattle, told the Board that the *Kassler* decision has thrown the escrow business in Washington into a state of crisis. She stated that the Supreme Court had created a lawyer's monopoly in the escrow business and that the *Kassler* opinion effected a clear restraint on trade. Sankey said that the public is wiser and more sophisticated than lawyers realize. Sankey also noted that whereas escrow agents are tested by written examination, covered by insurance and bonded, attorneys have no special testing in real estate matters, are not required to carry malpractice insurance and need not be bonded.

- Olympia attorney Larry Shannon, representing the Washington Mortgage Bankers' Association, told the Board that whatever action the Bar Association chose to take, it was imperative to first seek input from the business sector.

- Dorothy DeYoung representing the Escrow Association of Washington said bluntly that *Kassler* will destroy the escrow business for non-lawyers. She said that her organization was willing to work with the Bar in resolving what she perceived as primarily an economic problem. Should the Bar prove unable to solve the problem, DeYoung warned that the Escrow Association does not foreclose the option of seeking answers elsewhere by other means.

- Seattle attorney Edward Lange urged the Board to take prompt action and not to try to resolve all aspects of the issue of unauthorized practice of law by laypersons. Lange cautioned that if prompt action were not taken, the specter of a constitutional amendment would rise. Lange also urged the Board not to overlook the fact that the pre-Kassler system was working well enough and that when non-lawyers have made mistakes in the past, they have generally been able to make restitution to injured parties.

- Vonnie Hays of Equitable Escrow complained that after *Kassler*, attorneys will continue to let escrow agents do what they have always done, but an additional fee will be tacked onto the real estate transaction. Some lawyers have reportedly set up a fee schedule for preparing conveyancing instruments in the amount of ¾ of 1% of the price of property.

- Jeanne Jones from Rainier Title Co. in Tacoma told the Board that she has had difficulty finding attorneys who fully understand all the nuances of preparing conveyancing documents.

- David Walz of Champion Escrow, Seattle, commented that in all the years he has done business he has never heard any complaints. Nevertheless, he was convinced that the Bar Association would come to the right decision in dealing with the *Kassler* decision.

President Welts, speaking at the end of the open discussion session, said that the Bar Association realized that time was of the essence. In recognition of that fact, Welts said that "a good plan today is better than a perfect plan tomorrow."

Task force Chairperson Hoff told the public that the two basic methods of clearing up the problems left by *Kassler* would be by promulgation of a Court Rule adopted by the Supreme Court, or by constitutional amendment. The latter method, Hoff noted, is not a speedy solution. Hoff also asked that those who have heard "horror stories" about lawyer incompetence in the conveyancing field understand that such stories are not characteristic of the profession. Finally, Hoff emphasized that his task force will actively solicit outside input in the rule-making process.

After the conclusion of the open discussion session, the Board voted to authorize the task force to prepare a draft Supreme Court rule regarding layperson preparation of conveyancing documents. Leave was granted the task force to circulate draft rules among concerned groups prior to final action being taken by the Board. Although the task force set a June goal for proposing a final polished rule for Board consideration, the task force will endeavor to begin circulating draft rule proposals within the very near future. Among other things, the task force will research the experiences of other states which have permitted the limited practice of law by laypersons.

Pervading the Board meeting was the knowledge that the Supreme Court need not automatically adopt what the Board proposes. Governor Paul Steere urged caution lest the whole matter blow up in the Bar's face. Spokane attorney Pat Murphy, a member of the task force, reinforced the need for circumspection and suggested that the Bar Association not promise too much, too quickly.

Recognizing the multidimensionality of the problem and the magnitude of the political risks, task force Chairperson Hoff told the Governors at meeting's end: "You're walking on hot coals." No one disagreed.

OTHER BOARD ACTIONS...

- **JUDGING JUDICIAL CANDIDATES—A special sub-committee composed of Bob Beezer, Tom Loftus, Pete Dewell and Bill Rush will report to the Board of Governors in February regarding guidelines for the Courts and Judicial Selection Committee. Specifically, the sub-committee will 1) recommend a standard of review to be applied by the Courts and Judicial Selection Committee in evaluating candidates for appellate and supreme court positions; 2) recommend what should be done about the three lay vacancies on the committee; and 3) recommend guidelines concerning the confidentiality of judicial screening activities. Friction has developed between the Judicial Selection Committee and the Board of Governors concerning the qualifications of judicial candidates recommended to the Governor by the Board.**

- **ABA CONVENTION—By unanimous vote, the Board instructed the Washington delegation to the ABA House of Delegates meeting in Chicago to be uninstructed. Each delegate was urged to vote his/her conscience.**

- **CORPORATE TASK FORCE REPORT—Cameron DeVore addressed the Board regarding proposed solutions to the crisis situation at the Department of State in Olympia. The Board adopted the report in principle, including recommendations for: a staggered business license system; a "lock box" suspense collection system; elimination of the necessity for notorized documentation; combination of filing and license fees.**

THE NEXT MEETING OF THE BOARD OF GOVERNORS WILL BE AT THE DOUBLETREE INN, SOUTHCENTER, ON FEBRUARY 12TH & 13TH.

THE MARCH MEETING WILL BE IN YAKIMA ON MARCH 19TH & 20TH.

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John M. Redenbaugh
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Three upcoming seminars provide a variety of appeal. They are: (1) a seminar co-sponsored by the Civil Rights Committee entitled *RACE DISCRIMINATION LAW PRACTICE: A REVIEW AND UPDATE,* (2) a seminar co-sponsored by the Intellectual and Industrial Property Section entitled *WHAT THE GENERAL PRACTITIONER SHOULD KNOW ABOUT PATENTS, TRADEMARKS & COPYRIGHTS: A SURVEY COURSE,* and (3) a public employee law seminar entitled *THE SHRINKING WORK FORCE: A New and Ominous Fact of Life for Public Employees.*

Friday, February 26, 1982 is the presentation date of *RACE DISCRIMINATION LAW PRACTICE: A REVIEW AND UPDATE.* We are pleased to announce that the Honorable Nathaniel R. Jones, United States Circuit Judge, Sixth Circuit Court of Appeals, Cincinnati, Ohio, will be appearing as luncheon guest speaker at this seminar. Judge Jones has been described as a man who spent ten years in the forefront of civil rights litigation; from October 1969 to October 12, 1979 he was General Counsel for the NAACP. Biographical data provided to our office reveals that while serving as General Counsel, Judge Jones coordinated the attack against northern school segregation and twice argued the Detroit school case, *Bradley v. Milliken,* in the United States Supreme Court. In addition, while acting as General Counsel for the NAACP, Judge Jones directed the NAACP's defense in the Mississippi Boycott case, directed the national response to attacks against affirmative action, and led an inquiry into discrimination against Black servicemen serving in the Military.

In addition, a fine faculty composed of attorneys and personnel from such areas as the U.S. Department of Labor, the Small Business Administration and the Office of General Counsel, Department of Health and Human Services will present a practical program concerned with rights and issues in such areas as housing, education and health. Treatment will also be given to the topics of Indian Law, Immigration Law and Minority Small Business Contractors. Mark your calendar now for this February 26, 1982 presentation.

For the general practitioner seeking to learn more about aspects of the law dealing with intellectual and industrial property, our seminar entitled *WHAT THE GENERAL PRACTITIONER SHOULD KNOW ABOUT PATENTS, TRADEMARKS & COPYRIGHTS: A SURVEY COURSE* should be of particular interest. Scheduled for March 26, 1982 at the Seattle Center, this program will deal with topics such as: Securing Patent Protection, Securing Trademark Protection, Trade Secret Protection and Copyright Protection. This is your opportunity to broaden your knowledge in this area of the law during a program specifically aimed at the general practitioner and presented at a "basic" level. Do you have any questions about patents, copyrights or trademarks? If so, plan to attend this seminar in March!

Finally, *THE SHRINKING WORK FORCE: A New and Ominous Fact of Life for Public Employees* will be brought to four different locations within the state: *Spokane* on Friday, April 2, 1982, *Seattle* on Wednesday, April 7, 1982, *Olympia* on Friday, April 23, 1982, and *Walla Walla* on Friday, May 7, 1982. This seminar should be of interest to attorneys in private practice as well as attorneys employed by governmental entities. Be on the lookout for your brochure regarding this informative and timely seminar.

Why not take a few minutes now to note the dates of these three seminars on your calendar; it's not too early to begin planning your CLE attendance for the remainder of 1982.

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February 19-20, 1982: Tacoma 9.00

PRACTISING LAW INSTITUTE

Income Taxation of
Estates and Trusts
February 18-19, 1982: San Francisco 13.00
Bankruptcy & Reorganizations
February 25-27, 1982: San Francisco 16.50
Federal Government
Civil Litigation
March 4-5, 1982: San Francisco 13.50

WASHINGTON STATE BAR ASSOCIATION

Tort & Product Liability Reform:
The New Act
January 29, 1982: Seattle 5.00
February 5, 1982: Olympia 5.00
February 19, 1982: Spokane 5.00
February 26, 1982: Yakima 5.00
March 5, 1982: Vancouver, WA 5.00

YOUNG LAWYERS SECTION

by **Stan Bakun and Chuck Coolidge**

Mandatory malpractice insurance, specialization, dues increases, desirability of a constitutional convention, and so on. The number of explosive issues challenging the bar in general and young lawyers in particular seems to be constantly growing. The importance of the resolution of these issues to all young lawyers cannot be overemphasized. *So why are so many young lawyers ignoring these issues?* Well, maybe it's not a case of ignoring, maybe just a kind of benign neglect (remember when we used to scoff at that phrase?). The point is that the senior bar has a special input to our policy-making board of governors by virtue of common experience, age compatibility, and to a lesser extent, common interest. Young lawyers must, as a practical matter, rely on their individual and associated lobbying efforts to accomplish goals they deem important. One of the most important and convenient mechanisms for vocalizing the interest of the junior bar is the Young Lawyers Section of the State Bar Association. The State has more than 11,000 lawyers with 75% of them eligible for membership in the Young Lawyers Section. *Yet membership in the Young Lawyers Section numbers less than 1,000!*

The Young Lawyers Section is working to become a more effective organization. Current Young Lawyers Section chairperson Paul Larson has appointed chairpersons and staffed each of the 15 approved committees. Work is in progress on a number of issues with special emphasis on the needs and concerns of the young lawyers of the State. Committees include Nominations and Elections, CLE, Legislative, Planning, Public Information, Budget, Ethics, Town Hall, Lawyer Evaluation, Admissions, Newsletter, Law Line, Law Day, ABA Affiliate, and Law-Related Education. Some 60 of your peers are already actively involved in the committee process. They are planning for a truly meaningful celebration of Law Day. They are studying the most recent legislative initiatives. They are reviewing the advisability for young lawyers of compulsory malpractice insurance and specialization. They are studying the Superior Court Judges Association initiative for six-man juries except in capital cases. And much more.

In the *Bar News* we will attempt to inform you of the activities of the Section and, hopefully, persuade you to roll up your sleeves and get involved. Special plaudits this month go to Fred Zeder, who helped conduct the successful Admissions ceremony held October 21st. More than 80% of the costs incurred in presenting the

ceremony will be paid through private pledges (the YLS budget will cover the remaining balance of less than $100). Kelly Corr is chairing the Ethics Committee study of the proposed modification of the Code of Ethics. Denver was the site of a mid-November ABA Affiliate conference and Claire Cordon attended as a delegate from the YLS. Claire will report to the Law Day Committee which is gearing up for a more visible effort for next year's Law Day activities. Reed Hadley reports that a Town Hall meeting is being planned for Cowlitz County. Jim Austin is spearheading the mid-winter CLE effort on products liability which will be presented in five cities. Pat Williams will represent the YLS at an upcoming law-related education conference in Portland. At its October 29th meeting, the YLS Board of Trustees formally reaffirmed their earlier resolution in opposition to the calling of a constitutional convention. Chairperson Paul Larson briefed the trustees concerning the most recent meeting of the Board of Governors which included discussions of compulsory malpractice insurance, proposed amendments to the securities statutes, and congestion in the Office of the Secretary of State. The amended bylaws adopted by the YLS will be presented to the Board of Governors in December.

The Young Lawyers Section offers State Bar activities, State Bar politics, and community service. It provides a unique opportunity to explore concepts which might be of lesser importance to the senior bar.

If you are 36 or younger *or* a member of the bar for less than five years, you should be a member of the Young Lawyers Section of the State Bar Association. Don't ignore the issues any longer. Get involved. All it takes is five bucks and a checkmark on the bar dues computer card. You who constitute such a significant percentage of the bar roster owe it to yourself to effectively vocalize the junior bar's points of view. Our section can be a vehicle for change or a bastion for the status quo—whatever the majority of the lawyers of this state desire and articulate. If you have any questions, comments or suggestions—or just want to know how you might get involved, your district member of the Young Lawyers Section Board of Trustees would very much like to hear from you. Contact Claire Cordon (Spokane), Jim Baker (Yakima), Reed Hadley (Longview), Chuck Snyder (Bellingham), John Ennis (Tacoma), or one of the Seattle contingent of Stu Cogan, Kelly Corr, Steve Rummage, John Forderhase, Arden Olson, or Karen Tall. □

1982 Notice to Members of the Bar:

The new 1981-82 Edition of the **Revised Code of Washington** is now available for purchase from Code Distribution Company, Ltd., the official Distribution Agent of the Statute Law Committee of the State of Washington.

This paperback RCW set contains 9 volumes, is handy to use in the office, convenient to carry to court, and compactly stored in any law library.

It is economically priced, at $165.00, and above all, it is the official publication of the Legislative Laws of the State of Washington, published by the Statute Law Committee under authority of Chapter 1.08 RCW.

For a subscription to the RCW, please mail payment in the amount of $175.89 (this amount includes sales tax) to **Code Distribution Company at P.O. Box #9422, Queen Anne Station, Seattle, Washington 98109.**

For more information, telephone Bill Treadwell or Joann Hackstadt at 206-365-1057.

Briefly Noted

Former Board Member, Quinby R. Bingham, Dies

Quinby R. Bingham, 58, a former member of the WSBA Board of Governors, died November 2. He was a partner in the Tacoma law firm of Mann, King, Anderson, Bingham, and Scraggin. Mr. Bingham was admitted to the Bar in 1949 and had been practicing law for nearly 31 years, most of that time in Tacoma. He had been an active participant in State Bar and local activities, having served as a member of the Legislative Committee, 1959-63 and as a Legislative Representative, 1965-72. He served as President of the Tacoma-Pierce County Bar Association, 1975-76. Mr. Bingham had just completed a three year term as the Sixth Congressional District representative on the Board of Governors.

Clerk's Office Starts New Service

Effective January 4, 1982, any file can be ordered by cause number one day in advance of intended use by calling Public Access at (206) 344-3976. The file will be waiting in the "Will Call" in the Public Access area of the King County Superior Court Clerk's Office by noon of the following day.

It is especially important that advance calls are made for older files since they are remotely stored and require this retrieval time.

Watch for Evaluation Questionnaires

Evaluation questionnaires of Superior Court Judges will be mailed to all King County attorneys in mid-February. Fred Butterworth, Chairman of the Judicial Evaluation Committee, states that considerable effort has been made to improve the survey questions and the screening process to insure the greatest possible accuracy. Their efforts, however, are of little use without the response of those attorneys qualified to perform the evaluations.

Please watch your mail and return the forms promptly.

Board Elections Due

Lawyers residing in the First and Fifth Congressional Districts and in King County, please note:

Members of the Board of Governors of the State Bar to represent those districts are due to be elected this year. Expiring in September are the three-year Board terms of Paul W. Steere, First District, Jack R. Dean, Fifth District and, F. Lee Campbell, King County at Large representative.

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

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

The petition must be filed in the Bar Office by 5 p.m., Monday, May 31, 1982.

Notice

TO: All attorneys participating in Group and Pre-paid Legal Plans

FROM: Washington State Bar Association

DATE: January, 1982

RE: Rule DR 2-103(D)(4)

This notice is to advise you of the correct rule governing group and prepaid plans. The rule became effective on January 1, 1979. The change in the rule occurred along with the changes in the advertising rules.

The rule provides for filing of annual reports to the Bar Association. If you run such a plan, please submit the report as required in (D)(4)(g) at your earliest convenience. If you are an attorney participating in one plan, please ask the person or group running the plan to submit a report. If you filed a report last year, please notify us of any changes.

Thank you for your cooperation.

Annual Pacific Coast Labor Law Conference

The Labor Law Section of the King County Bar Association in conjunction with the University of Washington is holding its 15th Annual Pacific Coast Labor Law Conference on May 13 and 14, 1982 in Seattle.

The two-day conference will focus on handicap and age discrimination, a dissection of the PATCO strike and its effect and influence on future bargaining in both the public and private sectors, and recent development and trends at the National Labor Relations Board. There will also be a session set aside to discuss union financial responsibilities under Landrum-Griffin, plant closures, employment at will and the effect and legality of the political picketing of U.S.S.R.-bound vessels.

The Washington State Bar has indicated that it will allow participants continuing legal education credit of 11.75 hours. Those attorneys attending the conference from other states should check with their local bar associations to determine the procedure for receiving CLE credit, if desired. The Section will gladly assist any such person in that respect. In the interim it is seeking CLE credit from those bar associations requiring it. For more information contact Judith Lonnquist, Committee Chair, at (206) 223-0344, or Olga Stewart at (206) 543-5280.

National Association of College and University Attorneys

A Mid-Winter CLE Workshop entitled *The Law and Funds for the Future: Legal Aspects of Charitable Giving, Institutional Planned Giving and Development, and Other Entrepreneurial Activities* will be held February 26-27, 1982, at Stouffer's Denver Inn, Denver, Colorado, and March 12-13, 1982, at The Mayflower, Washington D.C.

The workshop will focus on techniques and tools for building a more stable funding future for your institution, including a look at basic forms of gifts, the new tax laws and philanthropic relationships for the future. For further information contact: Edythe M. Whidden, NACUA, One Dupont Circle, Suite 650, Washington D.C. 20036, (202) 296-0207.

Discipline

Thomas M. Baker, Jr. Reprimanded

Thomas M. Baker, Jr., of Tacoma, Washington, received two reprimands from the Board of Governors on December 11, 1981. Mr. Baker received one reprimand for delay in completing a probate commenced in 1978, and for representing two personal representatives of the estate with conflicting interests. By stipulation his conduct in this matter was found to be in violation of DR 6-101(A)(3), prohibiting neglect of a legal matter; and DR 5-105 prohibiting representation of clients with conflicting interests.

Mr. Baker received the second reprimand for delay in completing a probate filed in 1977, in which he was both attorney and co-executor. Because of his inaction, the other co-executor was required to employ a separate attorney. By stipulation Mr. Baker's conduct was found to be in violation of DR-6-101(A), prohibiting neglect of a legal matter.

Patrick A. Geraghty, Jr. Reprimanded

Patrick A. Geraghty, Jr., of Seattle, Washington, was reprimanded by the Board of Governors on December 11, 1981. Mr. Geraghty was reprimanded for failure to carry out a contract of employment with a client to obtain evidence the client believed would give him the basis for bringing a lawsuit, despite assurances to the client that he was attempting to obtain it, and allowing the statute of limitations for bringing the action to expire. By stipulation his conduct was found to be in violation of DR 6-101(A)(3), prohibiting neglect of a legal matter; and DR 7-101(A)(2), prohibiting intentional failure to carry out a contract of employment with a client.

In Memoriam

Alan A. Bruckner, 63, of Coconut Grove, Florida, died December 2. He was admitted to the Bar in 1958.

J. Kennard Cheadle, 76, of Seattle, died December 29. He was admitted to the Bar in 1931.

Curtiss M. Clark, 63, of Coulee City, died November 24. He was admitted to the Bar in 1946.

U.S. District Judge William J. Lindberg, 76, of Seattle, died December 15. He was admitted to the Bar in 1927.

James H. Madison, 56, of Seattle, died December 13. He was admitted to the Bar in 1950.

Notices

ADVERTISING RATES

Professional—Per issue: $25 per typeset column inch. Billed upon publication.

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PROFESSIONAL

Ronald A. Marks, Esq. of the Washington State Bar and the Ohio Bar announces his availability to lawyers for consultations and referrals in matters involving Ohio Law or Ohio cases, the situs of which is in the State of Ohio; practice emphasizes personal injury, divorce, social security disability and trial of cases in all courts. Formerly: partner Snider & Marks, Vancouver, Washington.

Ronald A. Marks, Esq.
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Telephone (216) 373-1028

David M. Abercrombie of the Washington and Hawaii Bars is available for consultation and referrals in Hawaii real estate matters. He is experienced in drafting and litigating questions regarding: Deposit Receipts Offer and Acceptances; Agreements of Sale; Horizontal Property Regime Declarations of CC&R, Bylaws and Rules and Regulations (Condominium and Time Share Condominium Documents); and other Hawaiian real property law related questions.

David M. Abercrombie of
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Third Floor Duncan Building,
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Telephone: (206) 622-7050

Lawyers Research Service, Inc. has been serving the research needs of the legal community for over a decade. LRS employs attorneys who are skilled in legal research. These research attorneys utilize the Washington State Law Library in Olympia, Washington, one of the most comprehensive and complete law libraries in the United States. We prepare legal memoranda, trial and appellate court briefs. Early deadlines can be met. Our reasonable research fee is $19./hr.

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W. Ben Blackett announces his availability for consultation on personal injury or other medical-legal litigation, exclusive of medical malpractice actions within Washington State.

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Joseph B. Heitman announces his availability for consultation on legal matters involving Science and Engineering.
Mr. Heitman is a Registered Professional Engineer (Chemical) with extensive experience in research, development, engineering and construction.

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Eugene M. Moen announces his availability for referrals in adoption matters: private and agency adoptions; interstate and inter-country adoptions; contested adoptions.

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Douglass A. North announces his availability for referral, consultation, or association on appellate arguments and briefs.

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CLASSIFIED

2 copy machines for sale. Minolta 201 roll bond copier. Toshiba BD 728 plain paper copier. Byron Holcomb, Attorney (206) 283-6069.

For Sale: RCWA, $900; Wash. Digest, $700; Wn 2d, $1,750.00; and, Wash. App. Reports, $300.00. Call (206) 483-9320 evenings.

IBM 450, OS System 6, word processor with paper handler and ink jet printer and all extras. 4 years old, deluxe and maintained under continuous service agreement. Assume existing IBM installment contract with a principal balance of approximately $10,599.33 which is half the original purchase price. Converting to different equipment. Call (509) 684-5254.

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For Sale: Nichols on Eminate Domain—volumes 1-9, General Index and List of Cases. (509) 547-7587.

Secretarial work stations, nearly new. Paid $600 apiece—$450/each or $800/pair. Call (206) 623-8433, ask for Emily Hansen.

For Sale: Washington Reports Second complete. Best offer. (206) 622-5555.

For Sale: Federal Practice and Procedure and Federal Practice Manual, U.S.C.A. K. Edison Gimple, Box 938, Soap Lake, WA 98851.

Location of Last Will: Any person having knowledge of the existence or location of a Last Will or Codicil for JAMES EINAR SKAR, Deceased, please call Gary S. Wiese at (206) 454-9422.

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POSITIONS

Tri-Cities solo practitioner seeks associate. Newly admitted or limited experience preferred. General practice, but with some emphasis on employment discrimination. Send resume to C.H. BARR, 1207 Geo. Wash. Way, Richland, WA 99352.

Seattle law firm with general commercial practice has openings for attorneys with one to five years of practice in corporate securities and business or litigation. Excellent academic background required. All applications kept strictly confidential. Please reply to Box 145, WSBA.

Securities/real estate attorney for Seattle based real estate syndication firm.

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Salary and benefits open; can be substantial for right person.

Please contact Gary E. Jacobson, 800 Fifth Avenue, 36th Floor, Seattle, WA 98104, (206) 624-6868.

Arbitrators Needed: Washington Arbitration Services, Inc., offers a full range of arbitration services and is currently signing up attorneys to act as arbitrators in King, Pierce and Snohomish Counties. Volunteer and fee positions available. Attorneys can earn no-cost CLE credits for participating. For more information, contact: Washington Arbitration, P.O. Box 70307, Seattle, Washington 98107; (206) 784-8787.

Attorney, admitted to Washington Bar, available for legal research and writing. Hourly or piece rates. Call (206) 232-6871.

Attorney with one year of experience in general practice and litigation seeks position with Seattle firm. Reply to Box 146, WSBA.

Deputy Prosecuting Attorney (felony trial), Clark County. Three years experience. Salary: $26,000-$29,000 plus benefits. Send resume to Prosecuting Attorney, P.O. Box 5000, Vancouver, WA 98668.

Anchorage, Alaska, firm with broad business and civil litigation practice seeking associates with one to five years experience. Send resume and recent writing or drafting sample to Atkinson, Conway, Bell & Gagnon, 420 L Street, Suite 500, Anchorage, Alaska, 99501.

Position Wanted: Seattle lawyer with five years general civil and trial experience with emphasis on litigation desires position with Seattle firm. Reply to Box 147, WSBA.

Position Wanted: Attorney with L.L.M. (tax), two years experience, desires position in Seattle or Eastside. Reply Box 148, WSBA.

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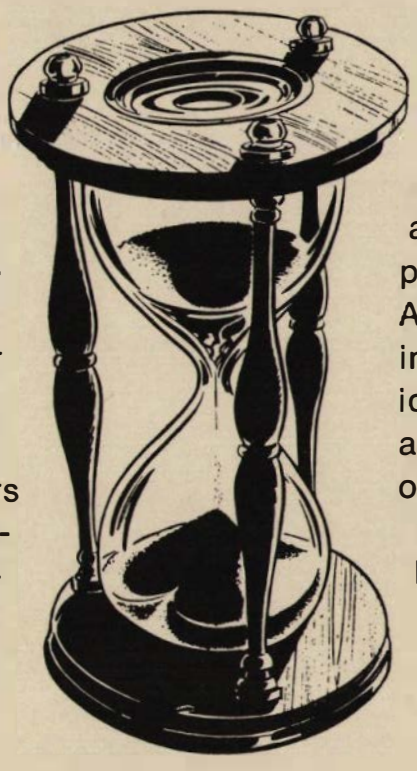

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