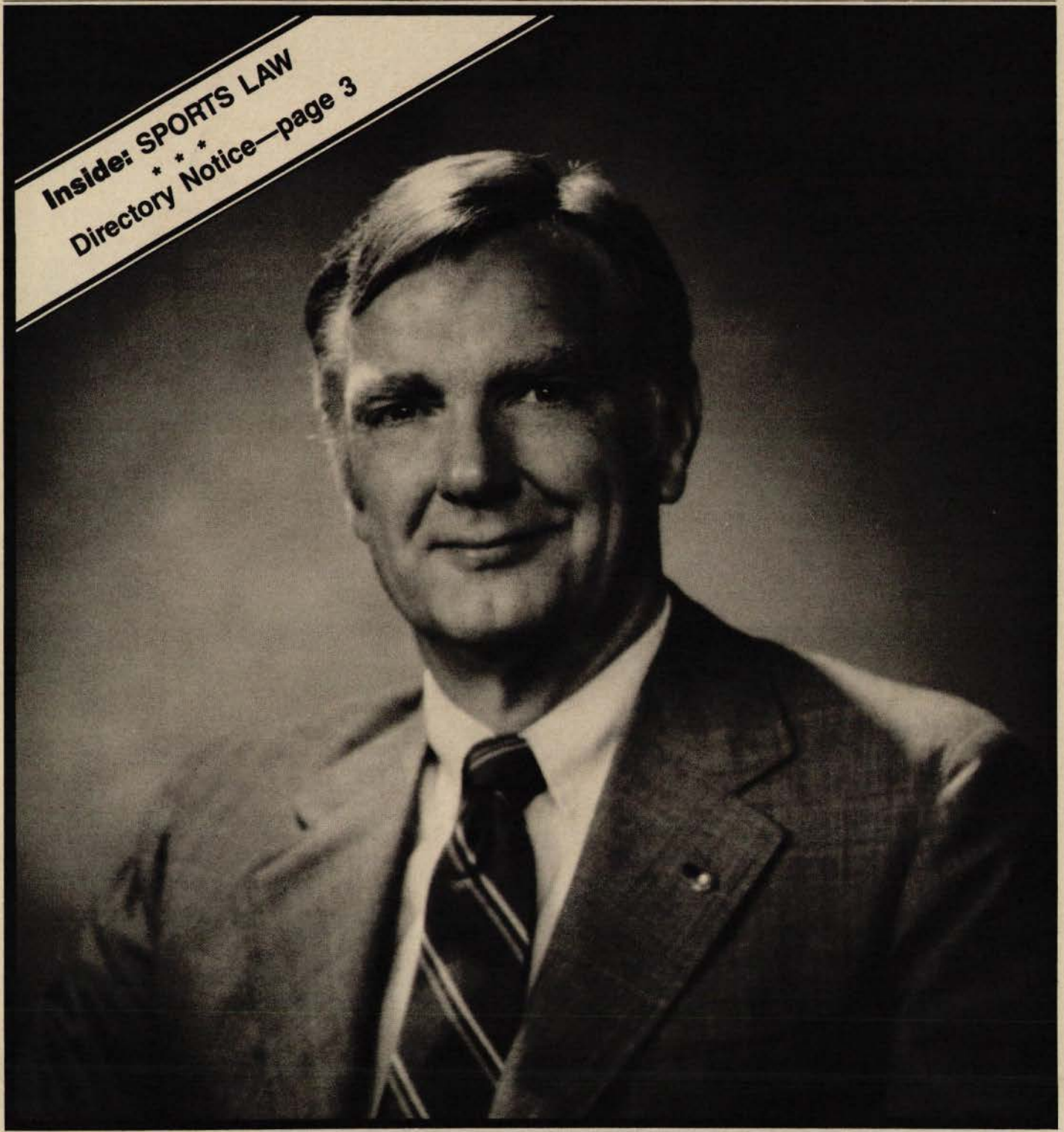


Washington State **Bar
News**

Volume 37, No. 10, October 1983

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* * *
Directory Notice—page 3



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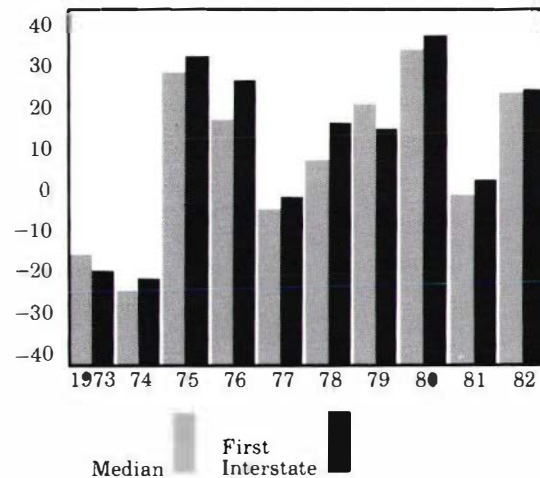
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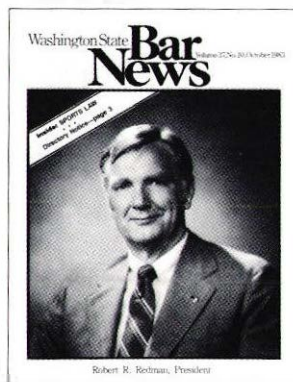
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CALLING ALL MEMBERS!

You will soon receive a request from us for an update of your address and phone number to be published in the 1983 Directory. Please help us by returning this information *RIGHT AWAY*. Thank you!

All interior photographs courtesy of Sports Information Office, University of Washington Intercollegiate Athletics.

Our Cover



Robert R. Redman is the 52nd president of the Washington State Bar Association. He assumed office at the conclusion of the Annual Meeting in Spokane, September 12-15.

We pound the pavement at noon. We swing mightily on the tennis courts. Lawyers are sports enthusiasts, partly because sports feed our naturally competitive natures, and partly because active sports ease the daily stress of law practice.

Sports have another fascination for lawyers, though. "Sports law"—it's one of the more alluring legal specialties these days. What is it and can you do it? In this special issue, our authors examine "sports law." Special credit goes to Spokane lawyer Duane Swinton, member of the Editorial Advisory Board, for coordinating this month's articles.

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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.

Pro Bono Pride

Editor:

I respond to the letter of Mr. Farra regarding appointed counsel's fees, as contained in the August *Bar News*.

Mr. Farra's lament apparently represents the view of those who achieved membership for the major purpose of accumulating large personal bank accounts.

In my opinion, one of the proudest parts of the lawyer tradition has been the willingness to serve as advocate for the downtrodden, disabled and poor. In my opinion, Bar membership includes the duty to accept underpaid, partially-paid and fully *pro bono* cases.

EUGENE A. STOCK

Marysville

That Legislative Difference

Editor:

Your readers should know that having lawyers in the legislature really does make a difference.

I have had the opportunity to watch the legislature in action on bills that our office has sponsored, as well as other bills. There is absolutely no question that having attorneys in the legislature is very, very helpful.

The attorneys bring a thoughtful approach to drafting problems. As a result, I think we have seen a much stronger legislature than in sessions where there were no attorneys. Of course, the lawyer members of the legislature were also very helpful to us in our efforts to try to improve services at the Corporations Division of my office.

They also played a major role in the effort to establish Washington's first permanent redistricting commission, which will be on the ballot this November.

Senator Phil Talmadge, Chairman of

the Senate Judiciary Committee, and Representative Seth Armstrong, Chairman of the House Judiciary Committee, are very able, talented, and hard working. They were ably supported by lawyer colleagues, including:

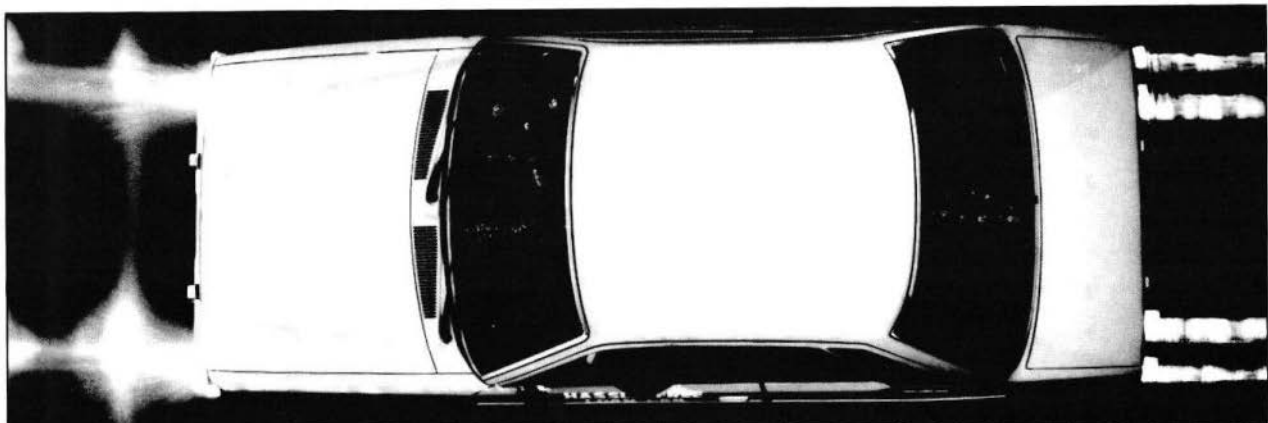
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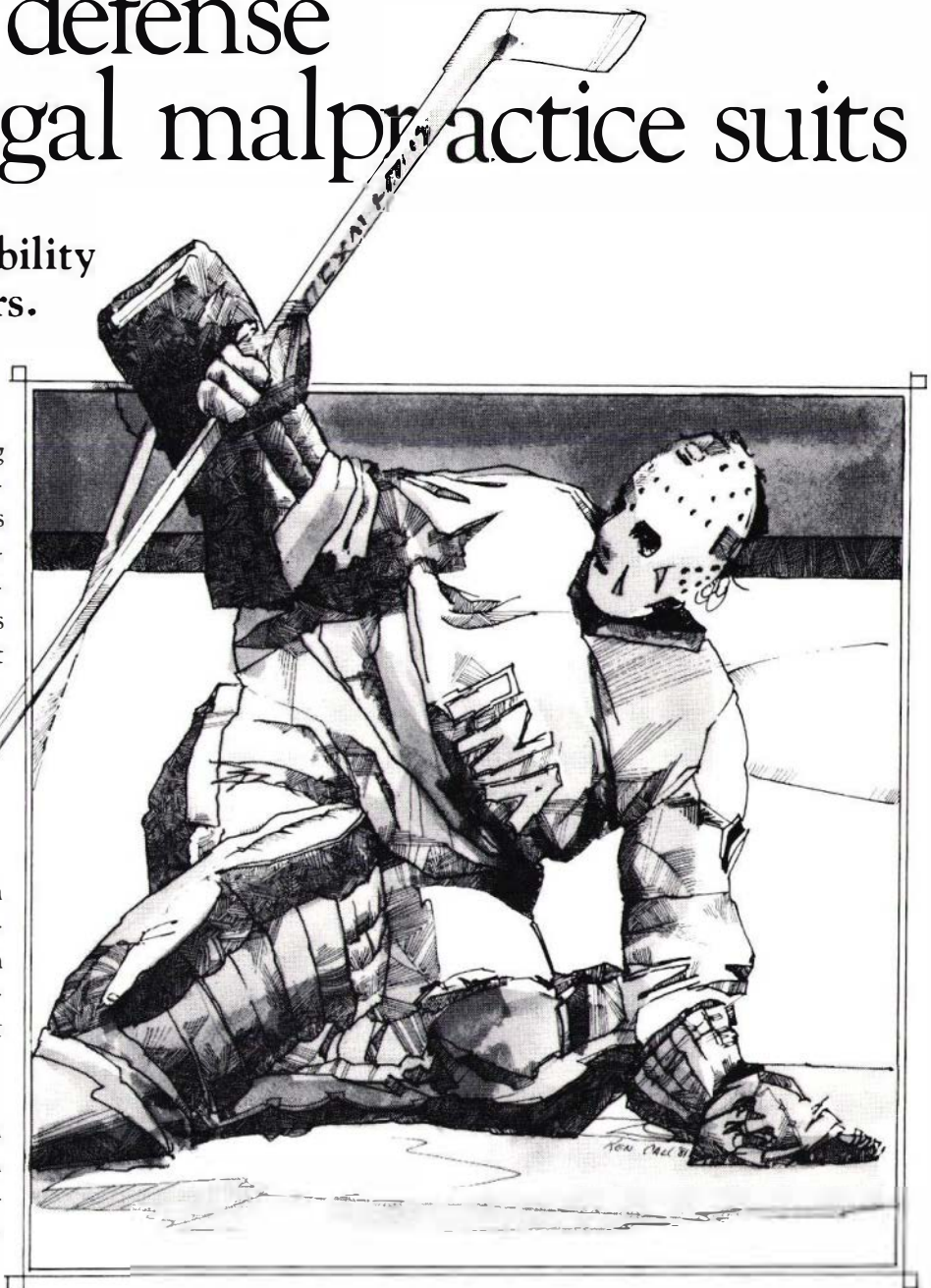
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Peas in a Pod

Two disturbing news items recently came across my desk.

The first is a story which originated in Louisiana. Nolan Edwards, a prominent Louisiana lawyer, was murdered in mid-August by his own client. Edwards had recently represented his client/murderer, Rodney Wingate, on the losing side of a big civil case. Wingate shot himself after killing Edwards.

Ironically, Nolan Edwards had in the past also represented Wingate on criminal drug charges. Wingate was, in fact, a convicted felon serving a twenty-year prison sentence when Nolan Edwards obtained a governor's pardon for him. The governor of Louisiana at that time was Edwin Edwards, attorney Nolan Edwards' brother.* The newspaper reports do not mention it outright, but there is a sinister undertone of political/legal hanky-panky in this *menage a trois* of lawyer, lawyer's brother/governor and the pardoned drug felon.

The other disturbing news item concerns the Ohio State Supreme Court.

Any court—and particularly an appellate court of last resort—should not be sullied with a reputation for bias, vindictiveness, or political power-lust. Sadly, the Ohio Supreme Court bears that reputation. Embroiled in a bitter fight with the Ohio State Bar Association, that state's Supreme Court is alleged to have used (and abused) its supreme judicial power to foster the political ambitions of its Chief Justice, Frank Celebrezze, and to wage his personal vendettas against his enemies. As the dirty linen is aired, and as the Supreme Court and OSBA trade accusations of bias, pettifoggery and incompetence, both Ohio's bar and judiciary become objects of public ridicule.

Ohio is 1,500 miles from Washington. Louisiana is farther still. Why should we care about what happens in those states?

*Edwin Edwards is again campaigning for the Louisiana governorship and, odds are, he will win in November.

Fortunately, Washington's bar and judiciary have not been scarred as have our counterparts in Ohio and Louisiana. Unfortunately, however, the public generally perceives all lawyers and judges as just so many peas in a pod. The mudslinging in Ohio and the sensationalism in Louisiana become national news, . . . news your clients and neighbors read, . . . news which J. Q. Public will associate with lawyers and judges everywhere, regardless of the state in which they reside. In your neighbor's eyes, a judge is a judge, and a lawyer a lawyer, no matter where she practices.

There are over 500,000 lawyers in the United States. Some would say that the media unfairly cover the scandals of a few lawyers to the detriment of many. I cannot agree. We pride ourselves on being a noble profession. We pride ourselves on our high ethics and public service. We pride ourselves on our ability to police our own house. Yet, although we in Washington have no power to control how judges and lawyers

in other states conduct themselves, all our pride rings hollow if one lawyer, anywhere, disgraces us.

The public is right. We really are all peas in a pod. We should make it our business, as members of a *national* profession, to keep high the caliber both of our judges and fellow lawyers no matter where they reside.

At the time this column was being typeset, it was reported that Washington's senior Senator Henry M. Jackson had died. Jackson, age 71, had been an active member of the Washington State Bar Association since his admission to the Bar in August, 1935.

Jackson was a lawyer who made good. He served his nation, his state, and his profession well.

We will miss him.

—Ed.

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Reflections on the Life and Time of HENRY M. JACKSON

by William F. Ingram

Reflecting on the life of Senator Henry M. Jackson, one has to note that, first, he was a lawyer; secondly, a politician. The same could be said, in varying degrees, of most members of the bench and bar. But our colleague, Scoop Jackson, gave this state, the nation, and, indeed, the world, new dimension to the meaning of the word "politician."

He rose in his government career in Congress to become, probably, the most influential and genuinely-respected politician of our time. He believed public life was an important calling and that it was important to do it well.

The foundation of Scoop's great achievement was his ever-abiding faith and confidence in the people he served. He had an innate ability to communicate with individuals in all walks of life and make them feel he cared about them and their problems. If you knew Scoop Jackson, you knew he never forgot a name and always remembered a friend.

Our family's association with Scoop goes back to my wife's parents, Edwin and Helen Templeton, who followed him during his early days in politics in Everett. When the Jacksons moved into our north Everett neighborhood in 1967, my wife, Mary Veva, and I—along with the other neighbors—enjoyed socializing with them when they were in residence. Christmas caroling was a special occasion.

Scoop enjoyed being among his hometown friends and neighbors; and, of course, the major events in his life, especially his run for the presidency, touched our lives.

While Scoop Jackson was a great and influential leader in the national and world scene, I believe his most impor-

tant contribution was his role as a mentor. He served through nine presidential administrations and learned well the workings of government. He was always eager to instruct others, and through the years his staff members were good learners. He inspired his colleagues in Congress, who had great respect for his leadership abilities and his broad knowledge in both foreign and domestic areas.

His family, Helen, Anna Marie, and Peter, were his pride and joy, and gave him purpose. At the funeral ceremonies, his son, Peter Jackson, said that his father believed that the key to success was, first, to be a good listener; second, to gather together and understand all the facts; and lastly, and above all, to be honest.

Former staff member, Congressman Tom Foley, in a moving and touching eulogy to Scoop, reminded us of a more fundamental principle which his fallen "leader" displayed, namely: hard work, in the tradition of his Norwegian ancestry. Foley told family, friends and state and national leaders who came to mourn his passing, that Scoop would not like them to dwell on things past, that he would say to them, "There is much to do, and tomorrow is another work day!"

As lawyers, if every member of the bench and bar would remember, every day of his or her life, these "Jacksonian principles," imagine what we could accomplish for our constituency. Think about that.

William F. Ingram is a partner in the Everett firm of Bell & Ingram.

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Robert R. Redman Installed as 1982-83 State Bar President

The Washington State Bar Association has had the good fortune of being chaired by a long series of very able presidents over the past 50 years. This tradition goes on as we enter our second half-century of service under the leadership of Robert R. Redman of Yakima. With a unanimous voice, the Board of Governors has elected Bob Redman as President for the 1983-84 term.

During his 26 years as a member of the WSBA, Bob has distinguished himself in many ways in his law practice, in service to the profession in general, and in his leadership and commitments toward the public good.

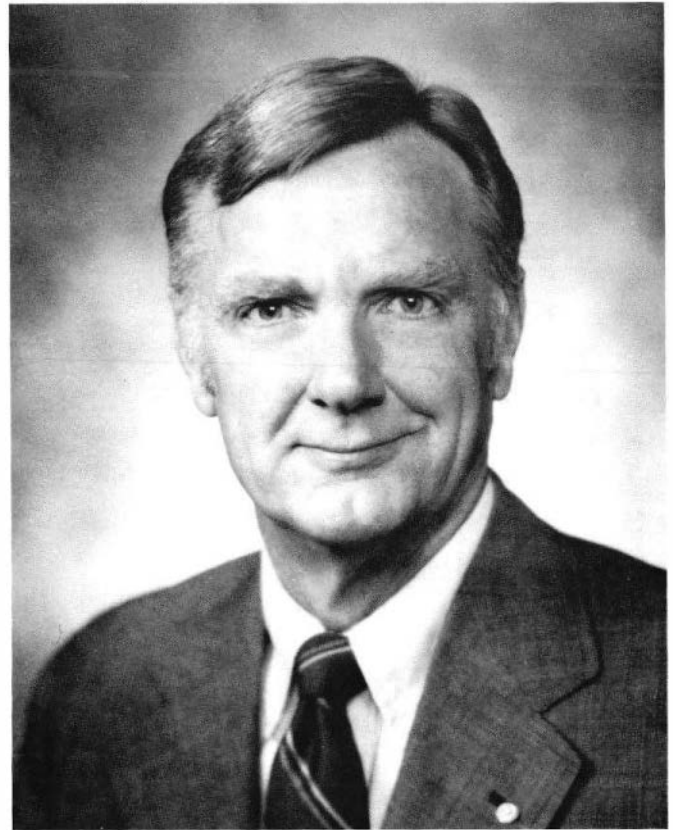
Bob was educated at the University of Washington, where he received a Bachelor of Business Administration Degree in 1951 and, after service as a naval officer, was graduated from the U.W. School of Law in December, 1956. He was admitted to the Washington State Bar Association in February, 1957. Not one to hop from one job to another, he joined the Yakima law firm of Gavin, Robinson & Kendrick in March, 1957, became a partner in 1961, and has remained there ever since. The name of the firm today is Gavin, Robinson, Kendrick, Redman & Mays.

If stability is one facet of the Redman personality, an extensive capacity for and interest in professional service is another. In addition to service on numerous local bar committees, Bob has, during his career, served on several State Bar Committees, including Judicial Selection, Attorneys Professional Insurance, and Legal Education Liaison. He also was a member of the Board of Governors (1974-77), representing lawyers in the Fourth Congressional District. He served recently as an alternate member of the State of Washington Judicial Qualifications Commission, and he was appointed earlier this year as co-chairman of the Committee on Rules and Administration, Ninth Circuit Court of Appeals.

Bob Redman has been active in civic and educational activities on both the local and state levels as well. Having served in several capacities with the University of Washington Alumni Fund and the Alumni Association, Bob was appointed President of the U.W. Alumni Association and made an ex-officio member of the Board of Regents (1973-74). He is presently a member of the University of Washington Law School Foundation and also has served as a member of the Willamette University College of Law Board of Advisors.

In Yakima, Bob has been consistently active in the United Way of Yakima County, serving in a number of offices including Campaign Chairman and President. The list of involvement in local affairs is lengthy—evidence enough that Bob enjoys contributing to the public good in a variety of ways.

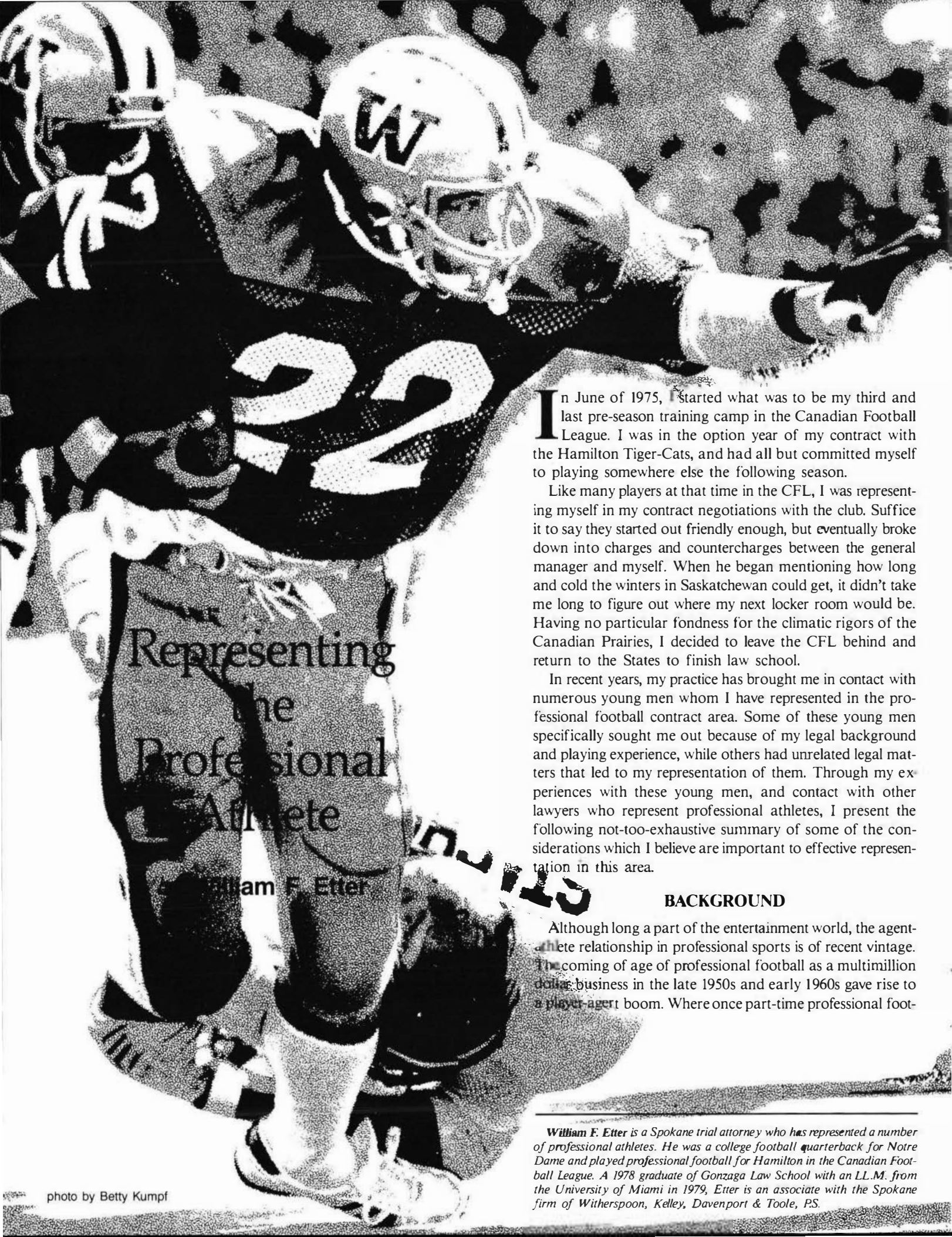
Bob and his wife Harriet have two boys, Robert Ross Redman, Jr., who graduated this summer from the School of



Divinity, University of Edinburgh, Scotland, and Bruce Clark Redman, a recent graduate of Dartmouth College.

In addition to much attention devoted to his family, Bob concentrates the very limited amount of free time he has on golf, fishing in Canada, and hunting in the Yakima Valley. The assessment of a colleague: "He's moderately successful in each, but at least he enjoys them."

Serving as President of the Washington State Bar Association is a time-consuming job. It has been a stretching experience for lawyers who also have to tend to the load of a busy law practice. For that reason, lawyers typically weigh the added obligations very carefully before accepting a nomination to the position. The character, capacity, and leadership of those so chosen have never been found wanting in our five decades of Bar service. Bob Redman has been amply gifted with those three virtues, and we look forward to a progressive year as he takes the helm.



Representing
the
Professional
Athlete

William F. Etter

In June of 1975, I started what was to be my third and last pre-season training camp in the Canadian Football League. I was in the option year of my contract with the Hamilton Tiger-Cats, and had all but committed myself to playing somewhere else the following season.

Like many players at that time in the CFL, I was representing myself in my contract negotiations with the club. Suffice it to say they started out friendly enough, but eventually broke down into charges and countercharges between the general manager and myself. When he began mentioning how long and cold the winters in Saskatchewan could get, it didn't take me long to figure out where my next locker room would be. Having no particular fondness for the climatic rigors of the Canadian Prairies, I decided to leave the CFL behind and return to the States to finish law school.

In recent years, my practice has brought me in contact with numerous young men whom I have represented in the professional football contract area. Some of these young men specifically sought me out because of my legal background and playing experience, while others had unrelated legal matters that led to my representation of them. Through my experiences with these young men, and contact with other lawyers who represent professional athletes, I present the following not-too-exhaustive summary of some of the considerations which I believe are important to effective representation in this area.

BACKGROUND

Although long a part of the entertainment world, the agent-athlete relationship in professional sports is of recent vintage. The coming of age of professional football as a multimillion dollar business in the late 1950s and early 1960s gave rise to a player-agent boom. Where once part-time professional foot-

William F. Etter is a Spokane trial attorney who has represented a number of professional athletes. He was a college football quarterback for Notre Dame and played professional football for Hamilton in the Canadian Football League. A 1978 graduate of Gonzaga Law School with an LL.M. from the University of Miami in 1979, Etter is an associate with the Spokane firm of Witherspoon, Kelley, Davenport & Toole, P.S.

ball players were paid part-time salaries, the AFL-NFL bidding wars of the 1960s turned the cottage industry of professional football into big-time business. During this time, substantial sums of money were being thrown to college draft choices by both leagues, and thus a need developed for competent legal representation. Today most professional football players rely on professional advice from lawyers or agents.

LAWYER-AGENT DICHOTOMY

While many lawyers/agents have fairly and competently represented their clients, an alarming number of problems have arisen from the actions of professional sports agents. They have not always performed in the best interest of the professional athlete, or of sports in general.

The admission of star running back O.J. Anderson, of the St. Louis Cardinals, that while a student at the University of Miami with college eligibility remaining, he had entered into a professional representation agreement with a sports agent only confirmed what many have suspected and known for years. Professional sports agent abuses have extended into other areas such as misappropriation of funds entrusted to the agent by the athlete, unscrupulous fee commissions, and purposeful inducement and encouragement of professional athletes to break established contracts with their clubs or to jump leagues.

A lawyer who represents professional athletes and a "sports agent" are not necessarily the same thing. Lawyers have established educational requirements and are licensed, and their conduct is governed by the Canons of Professional Ethics. Conversely, agents have no educational requirements, require no license, and have no ethical standards by which they are policed. This lack of regulation has greatly contributed to abuses by professional sports agents.

Recent changes have occurred, however, which are intended to supervise and control the activities of professional sports agents.

In September of 1981, then-Governor Brown of California signed into law a bill requiring non-lawyer sports agents to be licensed in the same manner as agents in the entertainment field in California. The bill requires, in part, that agents soliciting college athletes in California register with the State Commissioner of Labor, post a \$10,000 bond and submit copies of their standard contracts and any subsequent contracts to the Commissioner. Any contract signed in violation of the act is void and unenforceable, and an agent that violates the act is subject to a \$10,000 fine, imprisonment for 60 days, or both.

Additionally, the new collective bargaining agreement entered into last fall between the National Football League Players Association (NFLPA) and National Football League Management requires certification by the NFLPA of any representative, agent, or lawyer of a veteran NFLPA member prior to the lawyer's or agent's representation of the athlete. Although many lawyers have complained of said certifica-


tion, and some have threatened suit, a certification requirement would appear to make good sense and be in the best interest of all parties involved, including management.

AN ATHLETE NEEDS REPRESENTATION

In 1979, at a sports law seminar in Miami Beach, I had the opportunity to converse with well-known Boston sports attorney Bob Woolf. I asked Woolf at that time whether he believed all athletes needed professional representation. Although he has represented over 400 professional athletes in his legal career, Woolf surprisingly said, "No." However, he quickly added, given the complexities of the professional sports business today, most athletes stand to benefit significantly from competent professional advice.

From contract negotiations to management of the athlete's income, effective representation allows an athlete to maximize his physical and promotional abilities and fully realize the fruits of his profession. Determining the value of an athlete's service can at times be a complicated process. The limited education and business background of most young professional athletes invites competent professional representation that can significantly better the compensation and benefits provided to the athlete.

Although in recent years the NFLPA has obtained considerable bargaining power and benefits for NFL players on the whole, their expertise is primarily utilized in the collec-



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tive bargaining process. It has been left up to lawyers and agents to determine and establish, one-on-one with management, the relative worth of the player himself.

SERVICES LAWYER-AGENTS PROVIDE

The list of services provided by lawyers and agents representing professional athletes is long and varied. Generally, all lawyers and agents involve themselves directly in contract negotiations on behalf of their client-athletes. Additionally, many lawyers also provide or secure tax and investment counseling, estate planning services, and money management expertise. In the recent past, only a few of these services were considered important to professional athletes, and then only for those players with superstar salaries. However, the recent rapid and dramatic escalation in the salary levels of nearly all players in team professional sports has made total client services a virtual necessity.

Other services commonly performed or made available by lawyers to their professional sports clients include securing promotional and endorsement contracts and speaking appearance and acting opportunities. The lawyer for the professional athlete may also perform more traditional legal tasks such as representing the athlete in landlord-tenant, DWI and domestic areas. The latter duties should not be ignored, since many sports lawyers obtain their first contacts with professional athletes the same way as Bob Woolf did over 20 years

ago when he represented a Boston Red Sox pitcher in a domestic dispute.

NEGOTIATING THE ATHLETE'S CONTRACT

An important consideration when dealing with the young athlete is to remember that his status as an athlete greatly precedes his maturity in other areas. For the most part, negotiations between an experienced senior team official and an inexperienced 21-year-old result in a *per se* unequal bargaining situation. However, a knowledgeable attorney maintains the ability to neutralize this bargaining imbalance and secure the best possible contract for his client.

There are a number of elements that play an important role in securing the best possible opportunities for the professional athlete. Initially, one must be honest with the athlete

A lawyer who represents professional athletes and a "sports agent" are not necessarily the same thing.

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he represents and not patronize him with tales of his inflated worth. The young professional athlete is in effect a product, and the lawyer must know his product's market value.

There are a number of informational sources available to the lawyer in determining the market value of his client-athlete. Objective information such as the average compensation previously paid for players drafted in the same round as your client is easily obtained. In the past, the NFLPA compiled a salary survey which showed the high, low, and average salaries and bonuses paid to draft choices in the prior year. Under the terms of the new collective bargaining agreement, the NFL clubs themselves will compile and provide this information. It should be noted that similar salary surveys exist in other professional sports.

Additional information should be obtained indicating the player and position needs of the team attempting to secure the services of your client. By researching sports periodicals and journals and talking with professional scouts and the player's college coaches, information can often be gathered as to what team might offer the best opportunity for your client.

It is important in this process to match the abilities and position of your client with the needs of the club, or clubs, attempting to secure his services—especially if you represent the late draft round choice or the "free agent" client. To these players, being in the right place with the right opportunity at the right time is considerably more important than the

amount of money they might be paid up front to sign with a particular team.

Negotiating with a professional sports team should not necessarily be viewed as an adversary process. Taking the approach that the team is the enemy, many lawyer-agents have alienated their clients with the clubs and the public long before they've played their first bad games on the field. Although a team may have a different idea as to what is fair compensation for your client, this should not signal an alarm to fight. The better tactic is to assemble more facts and evidence which support your claim that the club is not compensating your player to the same extent that other players with comparable experience and ability are being compensated by other clubs in the league.

Compensation to the athlete encompasses not only a "base" salary (that amount to which the club will pay the player for a given season), but also performance bonuses and incentives designed to both motivate and reward the player. Bonuses and incentives are usually specifically negotiated and incorporated in the standard form NFL contract (which also includes the player's base salary).

Bonus and incentive clauses typically provide a player with additional compensation for meeting certain performance standards. For example, a player may receive \$3,000 additional compensation per game for every game the particular player starts. Other bonuses and incentives may call for additional

compensation based on the number of tackles made, touchdowns scored, yards rushed, or touchdown passes thrown or caught by a player. Furthermore, a player should be rewarded with additional remuneration should he make one of the league all-star teams.

It is in the area of bonus and incentive negotiations where the lawyer-agent can be the most creative in helping to secure the best opportunity available to his client. Bonus and incentive provisions are especially important to the lower-paid, or less well-known player who nonetheless exhibits significant potential to excell. Provided additional compensation for superior performance, a player will be compensated in a manner that is commensurate with his skill, ability, and productivity.

However, in negotiating bonus and incentive clauses the lawyer-agent should never negotiate for items that can create resentment between the player and the club, and others. The lawyer or agent who demands that his client play only a maximum number of minutes, or receive a private suite of rooms while on the road, not only sacrifices his own competence and credibility in the eyes of management, but draws attention away from contractual areas that are significantly more important to the long-term interests of his client.

Almost as important as *what* to negotiate, is *where* to negotiate. I've represented a number of players who exhibited professional potential but whose lack of size, or abbreviated

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college careers, lead them to be overlooked in the early rounds of the NFL draft. Although players such as these have the potential to play in the National Football League, many will get lost in training camp and never get the playing exposure they need to succeed.

A good strategy for these athletes is to consider opportunities in the Canadian Football League or the new United States Football League. In these two leagues, players with potential will get the opportunity to play and further refine their skills, and also develop greater exposure for themselves.

One of the important keys to negotiating the contract for the unrecognized player with potential is not to allow him to be tied to a long-term contract. In such cases, the *maximum* contract period should be two years, which with the additional option year available to the club will obligate him to a team for a period of three years. Contracts of longer duration may both limit the successful player from obtaining greater compensation from his own team, and restrict his freedom of movement to other leagues or teams.

CALL IN THE EXPERTS

The amount of money now being paid to professional football athletes requires tax, estate planning and money management expertise which is often beyond most lawyers' and agents' capabilities. Most of us would agree that San Diego Charger quarterback Dan Fouts' six-year contract calling for

\$1,000,000 a year is of sufficient size to warrant considerable tax, estate planning and money management attention. While not many players will ever approach this compensation level, the average NFL salary of over \$80,000 per year is still ample reason to include tax attorneys, CPAs, stockbrokers and other management expertise in your representation services.

LAWYER-AGENT AS COUNSELOR

Often the physical size and public status of a professional football player belies the fact that he is usually an individual with limited life experience. It should come as no surprise to the lawyer representing such an individual that he will be in need of advice to aid him in planning his post-athletic career. The average playing career of an NFL player is approximately four and one-half years, and often at age 26 the player finds that he must leave the upper echelons of one profession and move on to a lifestyle that usually reflects a drastic decline in compensation. The lawyer or agent who doesn't counsel and help the player provide for his post-athlete career days is not diligent in his professional duties.

It must be remembered that only approximately 29% of the players in the NFL have received their undergraduate degrees. Since off-season conditioning and rehabilitation of injuries now makes professional football a twelve-months-of-the-year proposition, many undirected players will put off until tomorrow important off-season education, or vocational training. It is my strong feeling that you represent the best interest of your client-athletes by literally forcing them into off-season education and vocational programs that will facilitate the ultimate transition from the world of professional sports.

CONCLUSION

I have touched on many general considerations involved in the representation of the professional football player. However, even the best-laid plans of mice, men and lawyers representing professional athletes won't cover every eventuality that may occur.

One such example that comes to mind involved an attorney friend who told me how he had secured a favorable contract for a former college teammate of mine with the Washington Redskins. As a defensive lineman, the player was reputed to have professional potential. However, as an "eater extraordinaire" he had few peers. Upon his reporting to rookie camp at 320 pounds, the famed Vince Lombardi, in his first year as head coach, watched my former teammate huff and puff through a series of simple sit-ups. When no longer able to restrain himself, Lombardi shouted to the out-of-shape player, "Lose 50 pounds by tomorrow or you're through!" Needless to say, it was a short-lived attorney-client relationship between my lawyer friend and my ex-college teammate.

I suppose if one were inclined to find a moral in this, it would be that ultimately, a sports representation attorney is really only as successful as his client! □

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Interscholastic Sports Eligibility

The Transfer Rule

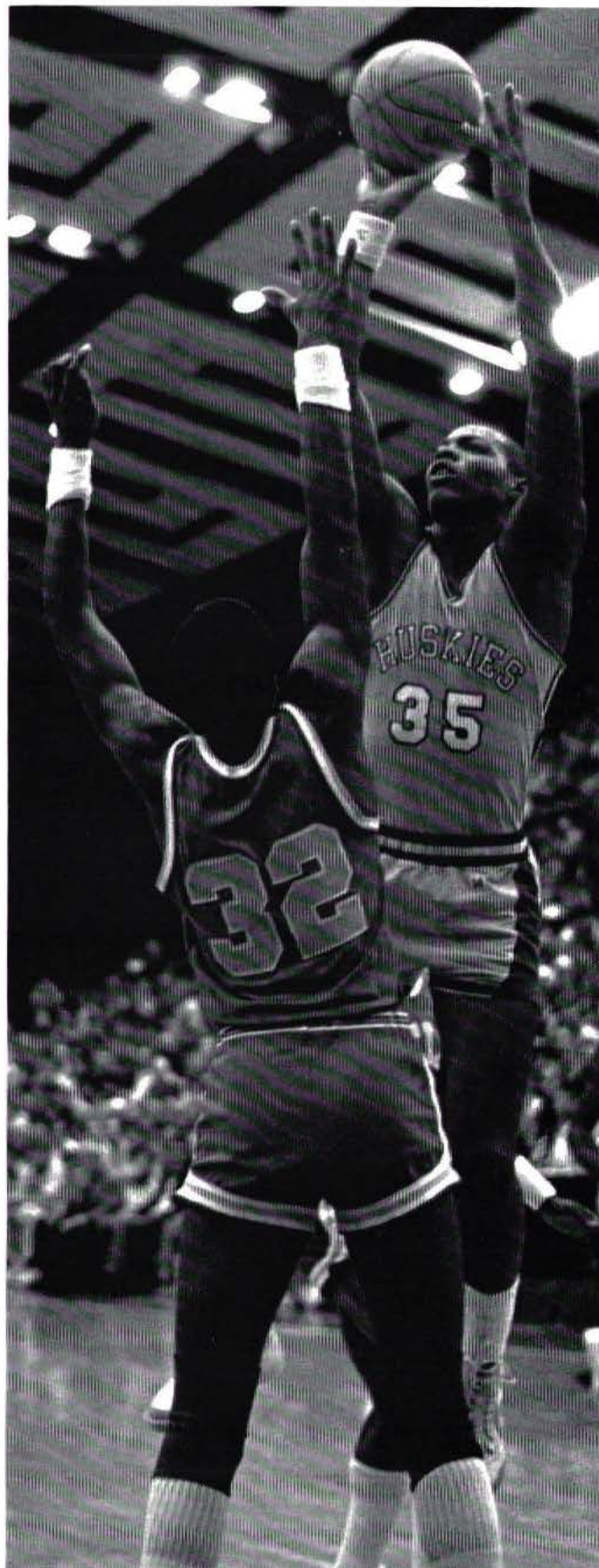
by John T. Petrie

If your son's or daughter's high school has recently been involved in the state-wide playoffs which officially terminate each high school sports season, you may have heard of the Washington Interscholastic Activities Association (W.I.A.A.). The W.I.A.A. is best known for its sponsorship of such playoffs as the Kingbowl and the state-wide basketball championships. It has a much less visible role, however, in its regulation of interscholastic high school and junior high activities.

The W.I.A.A. is a nonprofit corporation headquartered in Bellevue, Washington, and its members consist of nearly all the public and private high schools and junior high schools in the state. It is managed by an Executive Board of 10 members, the elected representatives of member schools in each of its 10 geographical districts. Its legislative body consists of 35 similarly elected members, including school board members, school district superintendents, principals, athletic directors and teachers.

The work of the W.I.A.A. is to control, supervise and regulate interschool debate and athletic activities on behalf of its member schools. RCW 28A.58.125. Regulation requires establishment of certain basic eligibility requirements, including age limits, minimum scholastic requirements, restrictions on transferring students, and limits on the number of sport seasons in which a student may participate. Each of these eligibility rules can be found in the *W.I.A.A. Handbook*, which is published yearly and distributed to member schools. The rules are reviewed annually by the State Board of Education.

In the event of a student's alleged violation of any of the eligibility rules, the rules of the *Handbook* also provide an opportunity for a hearing before a local hearing panel, an appeal to the Executive Board and, if necessary, an appeal to Superior Court pursuant to RCW 28A.88.010 through .015. During the past five years, approximately 300 hearings per



John T. Petrie is a partner in the Seattle firm of Diamond & Sylvester, where his particular focus is commercial litigation. He is a 1972 graduate of the University of San Francisco School of Law.

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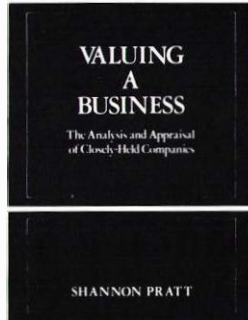
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year have been processed, and the number of appeals to Superior Court has been limited to approximately five or six.

THE TRANSFER RULE

By far, the transfer rule creates the largest number of hearings and appeals. The transfer rule, W.I.A.A. Rule No. 23.15, provides for free transfer among school districts *unless* a member school "has reason to believe that a student has transferred for athletic reasons."

In such event, the member school may file a written request with the principal of the school the student is attending. The student is notified and given the opportunity for a hearing. According to the rule, the hearing panel must declare the student eligible unless it

...possesses sufficient evidence to reasonably believe the student transferred (1) for the purpose of participating in interscholastic athletic activities, and/or (2) (as) the result of having been recruited by an employee of the new school district or school to participate in an interscholastic activity.

Violations of the rule usually fall into one of two classes:

- (1) the student is actually recruited, or
- (2) the student or his/her parents want the "greater exposure" which a larger school, a better coach, or a better athletic program can provide.

If the rule is violated, the penalty is the denial of the right to participate in interscholastic activities for one year.

The transfer rule has not been challenged in a Washington appellate court. Similar rules have been challenged in other courts, alleging violations of the Free Exercise of Religion Clause, the Equal Protection Clause, and the Due Process Clauses of the various state Constitutions and the U.S. Constitution. Courts faced with such challenges have held that the rule violates none of these Constitutional provisions, and further that courts should generally leave the final authority in such matters to the high schools themselves.

CASE LAW ANALYSIS

In *Cooper v. Oregon School Activities Ass'n*, 52 Or. App. 425, 629 P.2d 386 (1981), two students transferred from parochial schools to public schools at the beginning of their sophomore years. Both alleged in their respective complaints that their parents chose to send them to parochial schools for their freshman years, but both prevailed upon their parents to permit them to transfer to public schools. Athletic consideration played no part in their transfer decision, but the Oregon transfer rule, being more restrictive than the W.I.A.A. transfer rule, stipulated that they be ineligible to participate in interscholastic activities for one year.

The trial court dismissed both suits, and the plaintiffs appealed, challenging the one-year ineligibility on several grounds, including violations of their rights to free exercise of religion and equal protection. With respect to the First Amendment challenge, the court held:

From the case law, it is clear that the Free Exercise Clause of the First Amendment could work to condemn laws such as the transfer rule at issue here, at least where application of such laws clashes "with imperatives of religion and conscience when the burden on First Amendment values is not justifiable in terms of the government's valid aims." *Gillette v. United States*, 401 U.S. 437, 462, 91 S.Ct. 828, 842, 28 L.Ed.2d 168 (1971). In assessing the permissibility of any rule which creates a burden on such values, the importance of the state's interest, the degree of encroachment on the individual's freedom and the availability of less intrusive means are the principal factors to be considered.

The court held that the state's interest in regulating recruiting in high school athletics rose to the level of a "compelling state interest" and therefore clearly outweighed the minimal impact on the plaintiffs' religious freedoms.

The court also held that the plaintiffs' equal protection rights were not violated:

The questions presented under the Equal Protection Clause of the Fourteenth Amendment are (1) whether the transfer rule is unequal in application to all transferring students in a way which bears no rational basis in terms of the purpose of the rule, or (2) whether the rule discriminates without any rational basis between those to whom it applies and others similarly situated whom it excludes.

The court held that the classifications created did bear a rational relation to the purpose of the rule, and further that the rule did not discriminate without any rational basis.

In a case decided the same day as *Cooper*, the Oregon Court of Appeals also held that the Oregon transfer rule did not violate a student's Substantive Due Process rights. In *Whipple v. Oregon School Activities Ass'n*, 52 Or. App. 419, 629 P.2d 384 (1981), the plaintiff Whipple had transferred from a public to a private high school and, similarly, was denied athletic eligibility for one year. Again, there was no claim that she transferred for other than purely academic reasons. The Oregon Court of Appeals held that her claim was the same as the claims of the plaintiffs in *Cooper*, and that the additional argument raised, violation of her substantive due process rights, would not change the result.

Citing several U.S. Supreme Court decisions such as *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), *Griswold v. Connecticut*, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965), and *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925), the court held that the substantive due process argument cannot be used to invalidate state regulation except in the narrow arena of privacy rights and family relations.

In *Walsh v. Louisiana High School Athletics Ass'n*, 616 F.2d 152 (5th Cir. 1980), the Fifth Circuit Court of Appeals reversed a decision of the district court (428 F. Sup. 1261, E.D. La. 1977), which had held that the Louisiana transfer rule, as applied, denied certain students equal protection of the law. The Louisiana rule allowed a student to participate in athletics at the high school which was in his home district. Home districts were geographical areas designated as atten-

dance zones for the public high schools by the local public school boards. The home district for a private or parochial school was coterminous with the home district of the public school in the same zone.

The plaintiffs attended Lutheran High School, the only high school in the greater New Orleans metropolitan area owned and operated by members of the Lutheran Church Missouri Synod. That same Synod operated seven junior high schools, but none in the Lutheran High School home district. Thus, anyone enrolling in Lutheran High School upon graduation from one of the seven junior highs was automatically ineligible to compete in interscholastic competition for one year. The Fifth Circuit Court of Appeals held that the transfer rule, under these circumstances, did not violate the plaintiffs' rights to free exercise of religion or to equal protection.

Analyzing first the free exercise of religion argument, the court cited the rule that a regulation neutral on its face may, in its application, offend the First Amendment's requirement of governmental neutrality, if it unduly burdens the free exercise of religion. The court held that the burden placed on the plaintiffs' free exercise of their religion was *de minimis*, because it did not deny them

...the right to actively practice the Lutheran faith. Similarly, it neither prohibits a parent from enrolling his child in Lutheran High School nor interferes with the ability of such a child to

obtain the religious education provided by that school. The rule merely prevents a child from participating in interscholastic athletic competition during his ninth grade year.

On the other hand, the court found that the state's interest in the regulation was compelling. The only such interest identified was the unwholesome and harmful impact of recruiting promising young athletes.

The court also held that the transfer rule did not violate the due process rights of the plaintiffs because, although this clause of the Fourteenth Amendment "extends constitutional protection to those fundamental aspects of life, liberty and property that rise to the level of a 'legitimate claim of entitlement,'" it does not protect "lesser interests or 'mere expectations.'"

The possibility of participating in interscholastic competition was a mere expectation, said the court, and therefore not protected. Responding to the plaintiffs' claims that their equal protection rights were also violated, the court held that the classifications created did not burden an inherently suspect class and that the classifications met the standard of being rationally related to a legitimate state interest.

Perhaps the reasoning which forms the basis of the decisions discussed above and many others like them is contained in one of the first reported cases to consider the denial of athletic eligibility to a high school student. In *Morrison v. Roberts*, 183 Okl. 359, 82 P.2d 1023 (1938), the Oklahoma Supreme Court held that these matters are best determined by the state high school athletic associations. The court said it this way:

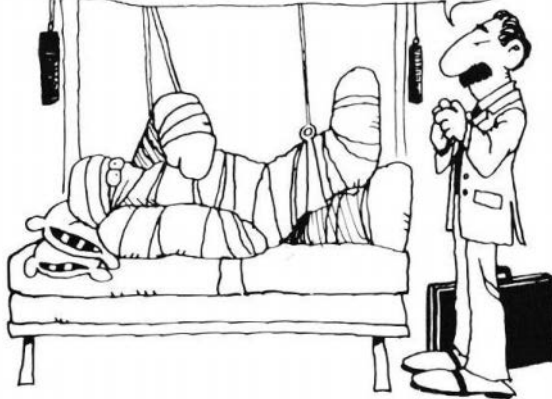
It is a matter of common knowledge that in various athletic organizations, and in various athletic contests, certain officials are clothed with final authority to construe rules and enforce penalties, and to suspend players from the game in progress, or for a definite period of time, or to forfeit the game or the match to one participant or the other. Frequently such rule enforcements work more or less grievous injury to one directly affected thereby, without in any sense giving him a right to correct or change the result by court action such as this. The courts generally should leave the final authority in the athletic officials or board, with whom that authority is placed by those who had authority to make the rules and authorize the method of application and enforcement.

CONCLUSION

The overwhelming weight of authority is that the one year ineligibility imposed as a result of a violation of the transfer rule does not violate a student's Constitutional rights to free exercise of religion, due process, or the equal protection of the laws. Courts in other states have found that the interest in keeping young athletes free from recruiting practices of other schools and coaches outweighs certain minimum restrictions on the free exercise of religion and further that classifications created by such rules are rationally related to that interest. □

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Sports Torts & School Athletics

by Douglas D. McBroom

photo by Bruce Terami

Recent serious injuries occurring in high school football programs, several of which have resulted in paralysis or death, have focused attention on the degree of care owed by school district employees to their student athletes. In describing that standard of care, the sports literature leaves no doubt as to the obligation of those in charge of high school athletic programs to go far beyond the mere teaching of competitive techniques in discharging their duty to students. Participants must be taught “[playing] techniques which are in compliance with health and safety as well as rule restrictions.”¹

Wherever the issue of the standard of care owed to athletes has been presented to an appellate court, the court has determined that school administrators have a duty to anticipate reasonably foreseeable dangers to student athletes and to exercise reasonable care to protect the athletes from those dangers.² As an integral part of this duty, school sports administrators are required to provide “proper instruction” in how the dangers can be avoided.³

¹National Federation of State High School Associations, *Football Handbook*, (1975), p. 20.

²e.g., *Carabba v. Anacortes School District No. 103*, 72 Wn.2d 939, 435 P.2d 677 (1967).

³*Rodriguez v. Seattle School District No. 1*, 66 Wn.2d 51, 401 P.2d 326 (1965); *Vendrell v. School District No. 26C Malheur County*, 233 Or. 1, 376 P.2d 406 (1962); *Darrow v. West Genesee Central School District*, 342 N.Y.S.2d 611 (1973).

ANTICIPATING HAZARDS

The Washington State Supreme Court has held that the duty of school administrators to anticipate hazards and prevent students from engaging in dangerous courses of action is precisely the same in interscholastic athletics⁴ as it is in woodshop,⁵ physical education,⁶ or other school activities which carry an inherent risk of physical injury. In spite of this, several of the major school districts in this state have taken an approach to protecting athletes which is entirely different than that taken to protect students in other activities.

In athletics, these school districts have tended to maintain a “hands-off” attitude, leaving safety planning and instruction entirely up to individual coaches; while in shop and physical education classes (where there is also a danger of physical injury), these same school districts have fully applied their educational expertise to planning safety programs for the benefit of participating students.

⁴*Carabba, supra*.

⁵*Swartley v. Seattle School District No. 1*, 70 Wn.2d 17, 421 P.2d 1009 (1966).

⁶*Rodriguez, supra*.

Douglas D. McBroom was trial attorney for Christopher Burke Thompson in a 1982 landmark case in which Thompson, who was left a quadriplegic after being injured in a 1975 high school football game, was awarded \$6.4 million in a suit against the Seattle School District. A 1965 graduate of the University of Chicago School of Law, McBroom is in practice with the Seattle firm of Schroeter, Goldmark & Bender, P.S.

Educational programs, including programs for safety education, are constructed along well-established lines:

- The first step is to convene a group of experts which includes teachers involved in the program itself and curriculum planners versed in educational techniques, including educational psychology, and who have access to various types of resource materials (*i.e.*, movies, books, and other teaching aids).

- Working with the teachers, the curriculum planners first identify the overall goals of the program, and then formulate short-range objectives which constitute progressive steps towards attaining these goals.

- After an instructional program has been designed by the curriculum planners and teachers, it is distributed, along with the designated teaching aids, to the teachers in the individual schools.

- When the plan carries with it a component of safety education, the teachers in the schools are required to warn their students of the hazards and to cover the safety material with the students before allowing them to engage in the potentially hazardous activity.

In this way, the school district central administration sets the standards of care to be followed by individual teachers in its shop, chemistry and physical education classes, much as union-management committees in industry or protocol committees in hospitals set standards in those settings.

The application of safety education principles to sports programs has been formulated by the American Association of Health, Physical Education, and Recreation to include:

- (1) recognition of hazards,
- (2) removal of hazards where feasible, and
- (3) control of hazards that cannot be removed.⁷

This formula is routinely applied by teachers and curriculum planners to anticipate and minimize risks in physical education classes, and has equal applicability to interscholastic sports programs.

The recognition of hazards in sports is made easier by the extensive statistical information and sports medicine literature available. Since the late 1960s, when sports medicine became a popular medical specialty, there have been hundreds of articles and books published on the frequency and mechanisms of various types of sports injuries. This accumulated knowledge can be easily reviewed and conveyed to coaches.

WARNING PLAYERS OF HAZARDS

A second crucial aspect of hazard recognition involves warning the athletes of the known dangers. It is widely recognized that an athlete will most conscientiously follow

⁷Elko, "The Injury Problem in Sports," *Administration and Supervision for Safety in Sports*, American Alliance for Health, Physical Education and Recreation (1977), p. 16.

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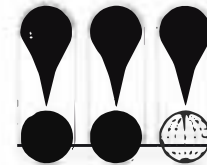
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“Instruction” is a legal duty which will form a basis for school district liability.

the protective and preventive measures he has been taught when he fully understands the reasons for these measures.⁸

There is ample information available on removing and/or controlling hazards in athletics. Sports medicine literature prescribes specific conditioning programs necessary for various sports. Drills to train players to react automatically to protect themselves against, or to avoid, hazardous playing techniques are a major subject covered at most coaches' conferences, as well as in coaches' journals and books.⁹

A WELL-DESIGNED PROGRAM

A well-designed safety program for any interscholastic sport will rely, in part, on the accumulated literature and knowledge of coaches in the district or region, and in part on developed resource material, such as movies and teaching aids, which have been proven effective in conveying this information to students.

The advantages of applying this sort of safety planning procedure to enhance the safety of a school woodshop, chemistry lab, or physical education class are apparent. The possibility of overlooking an important element of instruction is greatly reduced and the likelihood of producing a sound program to eliminate or control dangers is improved.

Equally apparent is the weakness in leaving safety planning for an interscholastic athletic activity up to an individual coach. The high school coach, by necessity, must focus his attention primarily on his classroom responsibilities. As a consequence, coaches are, in many instances, simply unaware of potential hazards and available teaching techniques and resource materials vital to the safety education of athletes.

DETERMINING LIABILITY

In sports injury litigation, particularly when the injury results from a playing technique rather than a field condition or defective equipment, a logical starting point is a careful analysis of what the player was taught—a determination of whether the school district, through its coach, provided the injured player with “proper instruction” on the *potential* for injury, and how to avoid it.

Given the in-place mechanisms of each school district (*i.e.*, the safety curriculum planning capability) the definition of “proper instruction” (*i.e.*, non-negligent supervision) must logically be construed to include, at the very least, *identification* of the risk, and use of the teaching techniques and resource materials which would be readily available to a com-

mittee of curriculum planners and coaches convened for the express purpose of safety education planning. Arguably, reasonable care by a school district in protecting athletes from serious injury could be construed to require a safety education plan for players which approaches the “state of the art” in the sport involved.

Both of the national football rules-making organizations (the National Federation of State High School Athletic Associations and the American Football Coaches Association) designate the “reduction of the risk factor to its minimum” and “instruction in safe playing techniques”¹⁰ as a primary function of sports administrators. As pointed out above, courts have agreed that such instruction is a legal duty which, when breached, will form a basis for school district liability to an injured athlete. If, in the course of litigation following an athletic injury, it becomes apparent that a coach was not aware of and therefore did not use teaching techniques and materials which were designed to prevent the specific type of injury at issue, then a finding of liability against the school district employer of that coach may well follow.

In light of this potential liability, it is particularly surprising that until recently so little emphasis has been placed on centralized safety planning for high school athletics. Equally surprising has been the lack of analysis of serious athletic injuries *after* they have occurred, in order to control the risk which *led* to the injury. Such post-injury analysis would, of course, occur in any other circumstance where even a rudimentary safety program was in place.

IN CONCLUSION

The frequency of physical injuries to students is far greater in interscholastic sports than in any other school activity.¹¹ Few school activities, other than interscholastic sports, carry the potential for catastrophic injury or death to students.

Fundamental principles of accident prevention and safety education apply with equal force to interscholastic athletics and to activities such as physical education, woodshop, chemistry, and driver's education. There is no logical justification for a school district to neglect to provide its athletes with the safety planning process which it effectively uses in protecting students from physical harm in other school programs. □

⁸See, *e.g.*, National Federation of State High School Associations, *Football Rulebook(s)*, 1969-1981; *A Coach's Guide to Safe Football*, American Football Coaches' Association (1973).

¹¹A study done by the Department of Sports Medicine at the University of Washington in 1973 showed that in that year 86% of participants in the high school football program in Seattle were injured seriously enough to require post-injury therapy.

⁹*Ibid.* (same as 7); *Op cit.* (same as 1); *A Coach's Guide To Safe Football*, American Football Coaches' Association (1973), p. 18.

¹⁰See, *e.g.*, Allen, *Complete Book of Winning Football Drills*, Prentice Hall, Inc. (1959).

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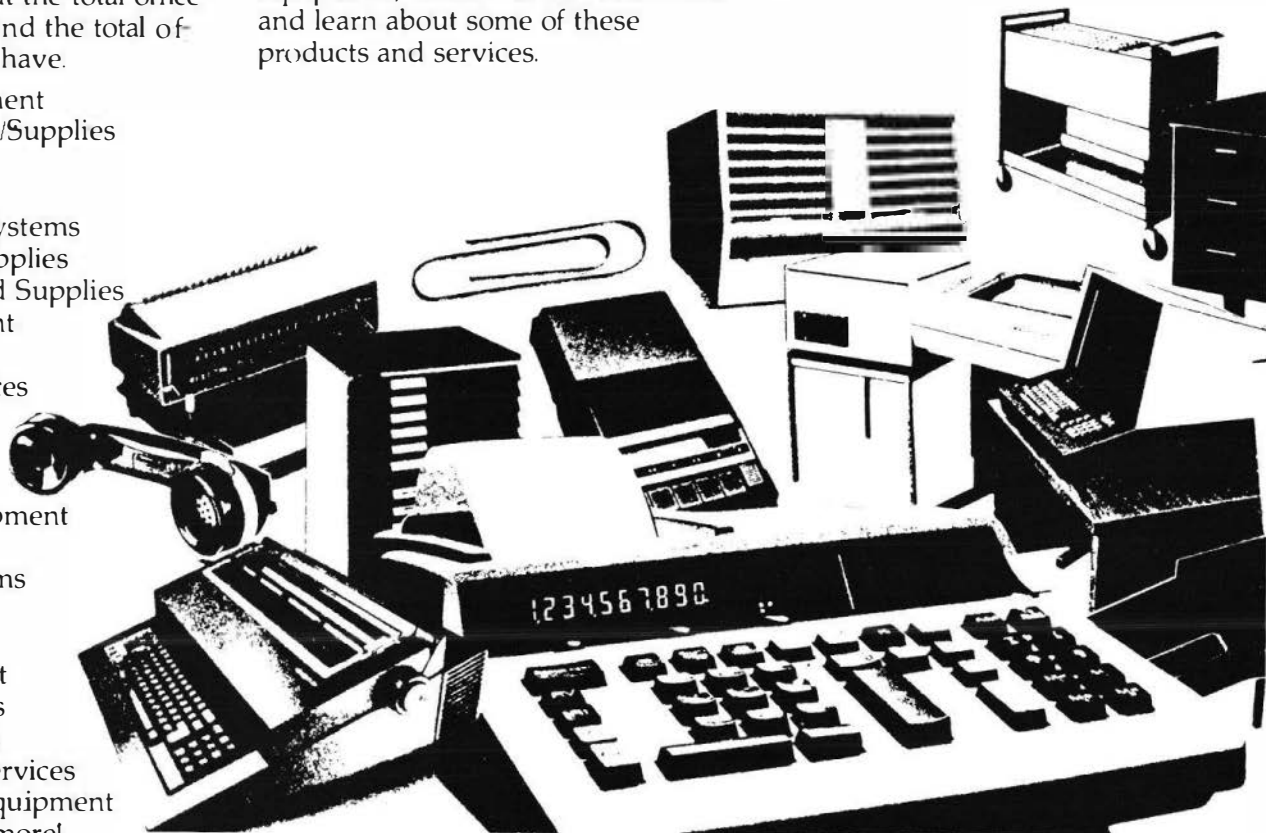
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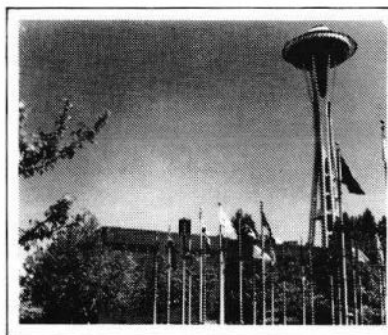
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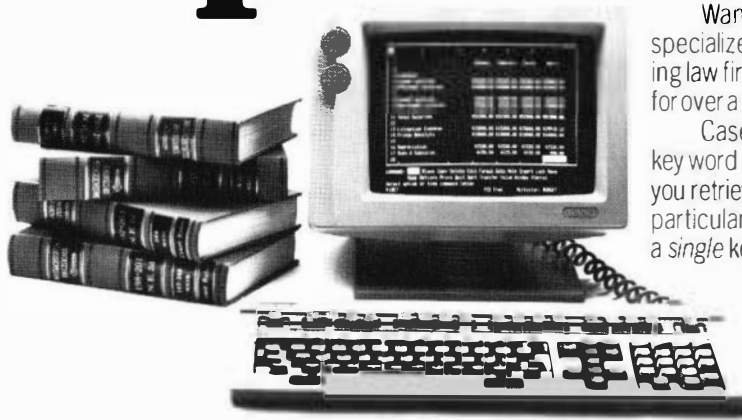
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The Insanity Defense in Washington

What a Jury Understands

by George Cleve Haynes

A cartoon, yellowed with age, is pinned to a cork bulletin board in the robing room behind a courtroom in Seattle. It depicts a tired judge facing a woman of mature years. Staring down from his ornate wooden bench, the judge tells her, "Damnit, lady, you can't plead insanity in traffic court!"

The judge is wrong. While it would be improper to claim insanity in the usual traffic court case, the law does not foreclose doing so in the proper case. In the year 1909, the Washington legislature made substantial revisions in the criminal code. One of these eliminated the defense of not guilty by reason of insanity. The following year the State Supreme Court ruled the legislature had acted in violation of the Constitution. The repeal of the insanity defense was invalid.¹

The court explained the nature of the defense at some length. At the heart of the matter was the accused's right to have the full protections of a jury trial. In the court's words,

Now, this right of trial by jury which our Constitution declares shall remain inviolate must mean something more than the preservation of the mere form of trial by jury; else the legislature could, by a process of elimination in defining crime or criminal procedure, entirely destroy the substance of the right by limiting the questions of fact to be submitted to the jury.

The Court viewed that right as inclusive of the right to question the defendant's mental state:

If he was insane at the time to the extent that he could not comprehend the nature and quality of the act—in other words, if he had no will to control the physical act of his physical body, how can it in truth be said that the act was his act,

wrote the court. It concluded,

One so accused had this right at the time of the adoption of our Constitution, and we are of the opinion that the question is so inherently related to the guilt or innocence of all accused persons that it cannot be now taken away from them without violating these guarantees of the Constitution.²

What a jury understands about the insanity defense is a subject of some disagreement among lawyers and the courts. Washington law requires trial judges to exercise discretion whether to instruct a jury or not on the meaning and consequences of a verdict of not guilty by reason of insanity.³ Subsequently, it was argued to the Court of Appeals that the rule offends due process. The court disagreed, affirming the rule of discretion unanimously.⁴ A petition for review in the State Supreme Court was denied.⁵

Despite the court's opinion that trial judges should have the discretion whether to instruct on the meaning of the verdict, the problem of a juror's misunderstanding of her or his task does not go away. Prosecutors rightly argue that neither a jury nor any member of it should concern itself with the punishment to be inflicted in case of a violation of law.⁶ Yet that is not what bedevils insanity defense cases. Quite apart from any consideration of punishment to be inflicted, does the jury understand, as a judge would, the essence of its work? Will it find the facts fairly, fully comprehending what it is called upon to do?

Not guilty by reason of insanity requires that a jury find a person to be dangerous, to have committed a clearly criminal offense, yet not be legally responsible for it. This is a subtle distinction. The difference is that a jury member may begin to speculate, not about the penalties to be inflicted, but about the sanctions which will not be inflicted.⁷ History is replete with examples.

¹ *State v. Strasburg*, 60 Wash. 106 (1910).

² *Ibid.*, 112-123.

³ *State v. McDonald*, 89 Wn.2d 256 (1977).

⁴ *State v. Stoudamire*, 30 Wn.App. 41 (1981).

⁵ 96 Wn.2d 1011 (1981).

⁶ See, e.g., WPIC Criminal 1.02.

⁷ In a strictly legal sense the danger is that the jury will not have been furnished with appropriate guidance for making its decisions. See, *Roberts v. Louisiana*, 428 U.S. 325, 49 L. Ed.2d 974, 96 S. Ct. 3001 (1976).

George Cleve Haynes practices law in Seattle. A graduate of Southern Illinois University with a J.D. from Chicago-Kent School of Law in 1974, Haynes has served as judge pro tem in municipal and superior courts, and has taught civil procedure for non-lawyers at Edmonds Community College.

DISCUSSION

The accused is at all times entitled to due process of law.⁸ A fair, meaningful jury trial is a fundamental right.⁹

At a time when special pleading has been abolished, the insanity defense rests upon a special plea.¹⁰ The designation of the verdict, "Not Guilty By Reason of Insanity," is itself a sophisticated, almost metaphysical concept.¹¹

Professor Perkins many years ago labelled this form of acquittal finding of "Guilty But Insane."¹² The President's Commission on Violent Crime recommends a revision of the United States Code to change the form of the verdict in federal courts to Guilty But Insane.¹³

⁸ Constitution of the State of Washington, Article I, Sec. 3; United States Constitution, Amend. XIV; *Lisenba v. California*, 314 U.S. 219, 236, 86 L.Ed. 166, 62 S.Ct. 280 (1941); *Duncan v. Louisiana*, 391 U.S. 145, 20 L.Ed.2d 491, 88 S.Ct. 1444 (1968); *In re Murchison*, 349 U.S. 133, 136, 99 L.Ed. 942, 75 S.Ct. 623 (1955).

⁹ *Ludwig v. Massachusetts*, 427 U.S. 618, 624, 49 L.Ed.2d 732, 96 S.Ct. 2781 (1976).

¹⁰ RCW 10.77.010 *et seq.*

¹¹ Professor Goldstein focuses on the problem: "...the jurors are told nothing at all about the prospect of commitment or release following upon acquittal by reason of insanity. . . . Unless told otherwise, the jury may be under the impression that it is being asked to release a man who has established both his incapacity and his dangerousness." Goldstein, *The Insanity Defense* (1967), at pp. 143-144.

¹² Perkins, *Criminal Law* (1957), at p. 771.

¹³ Report, *op cit.* In light of the *Strasburg* holding, a definition of "Guilty But Insane" might be unconstitutional in Washington.

Judges Prettyman and Burger (now Chief Justice of the United States) in a 1957 case met the issue head on, thus:

...the jury may return one of three verdicts, guilty, not guilty, or not guilty by reason of insanity. Jurors, in common with people in general, are aware of the meanings of verdicts of guilty and not guilty. But a verdict of not guilty by reason of insanity has no such commonly understood meaning. . . . the jury has a right to know the meaning of this possible verdict as accurately as it knows by common knowledge the meaning of the other two possible verdicts.¹⁴

The juror's awareness that punishment can follow conviction is so widely acknowledged that in the State of Washington the jury is given a cautionary instruction in that respect.¹⁵

The 1909 *State v. Barnes* decision evidences that jurors have long been concerned that they may be freeing dangerous people. That case reports a colloquy between a jury foreman and the presiding judge. Barnes, charged with murder, pleaded not guilty by reason of insanity. The jury requested further instruction to advise them on the meaning of acquittal by reason of insanity. The judge refused their request. He stated,

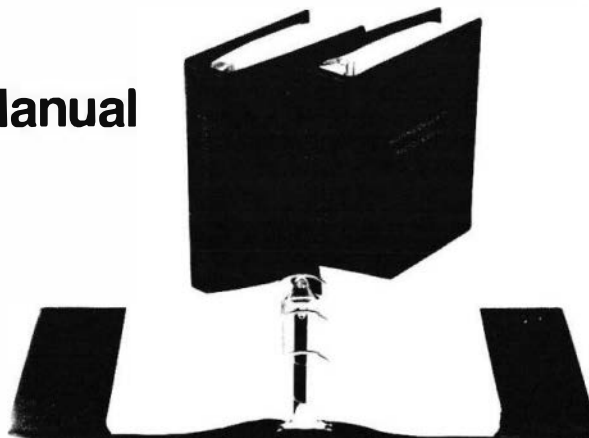
¹⁴ *Lyles v. United States*, 254 F.2d 625 (D.C. Cir. 1957) (en banc) overruled as to form of instruction to be given, 471 F.2d 969, 997.

¹⁵ WPIC 1.02 recites in pertinent part that, "The fact that punishment may follow conviction cannot be considered by you except insofar as it may tend to make you careful."

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"The fact that you are making your verdict in this case dependent upon the punishment, or what might be done with this defendant after this trial, satisfies me that you should not consider this case at all." However, he went right on to explain the various things that could happen, only to conclude by saying, "But that ought not to enter into your consideration at all."¹⁷

What is remarkable in this case, other than perhaps the use that has been made of it,¹⁸ is its clear historical record of the fact that juries do indulge that concern in insanity cases. This is recognized in much more recent times.¹⁹

As was said by three dissenting members of the Washington Supreme Court, "Juries are acutely sensitive to the prospect of having dangerous persons at large and are tempted to 'take the law into their own hands' in order to carry out what they may consider is their responsibility to protect society."²⁰ A criminal defendant has a right to a full statement of the law from the court in order that the jury understand what they are called upon to do.²¹ The nature of a jury trial is to have instructions to provide guidance in relating facts to law.²²

Because the insanity defense is itself a constitutional right, the exercise of which is implemented by a special plea and a statutory proceeding involving legal definitions, instruction on it should follow the statute.²³ The rule of discretion puts a needless burden on the trial court to assess whether to give the instruction or not. The trial judge must second-guess the minds of the jurors. If the judge permits *voir dire* on the subject but does not later instruct the jury on it, a real dilemma arises. All this adds complexity to the trial, inviting error where discretion might be abused. One who raises the insanity defense anywhere in the State of Washington should know what instruction he will be entitled to receive.²⁴

As was said by the dissenters in *White*,

In order to make the defense of mental irresponsibility a meaningful one, it is necessary to that end that juries be made aware of the social controls and machinery which the law provides for society's protection from a mentally irresponsible person who is unsafe to be at large.²⁵

¹⁶ 54 Wash. 493 (1909).

¹⁷ *State v. Barnes*, 54 Wash. 493 (1909).

¹⁸ *Ibid.*, at 495. *Barnes* is sometimes cited for the proposition established in the *McDonald* case.

¹⁹ In the retrial of Durham, a colloquy appears on the record of the District of Columbia Court that ends with the judge declaring, "In other words, I don't think the jury should be kept in the dark about this thing. Otherwise, they conjecture out in the jury room and say, 'Well, now, what happens if we find him not guilty by reason of insanity?' I think they ought to know what's going to happen." Donnelly, Goldstein and Schwartz, *Criminal Law* (1962) at pp. 771-772.

²⁰ *State v. White*, 60 Wn.2d 551, 602 (1962) (Hunter, J., joined by Finley, C. J. and Foster, J., dissenting).

²¹ *Bird v. United States*, 180 U.S. 356, 45 L.Ed. 570, 21 S.Ct. 403 (1901).

²² *Roberts v. Louisiana*, 428 U.S. 325, 49 L.Ed.2d 974, 96 S.Ct. 3001 (1976).

²³ *cf. with Bird, supra.*

²⁴ In Stoudamire's case he was tried twice after his first jury deadlocked. Two different judges in the same county took two different views on the issue.

²⁵ *White, op cit.*

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A number of recent decisions from other jurisdictions deal with this issue. While sheer numbers do not determine rights in a just society, it signals historical growth (which, in turn, suggests recognition of a due process right) that the overwhelming majority of modern courts that have answered the question have permitted the jury to be so instructed.²⁶

The Massachusetts court, in deciding the issue in a murder case, summed up succinctly and forcefully. In *Commonwealth v. Mutina* the court wrote, "Implicit in the jury's guilty verdict was a determination that the Commonwealth had proven the defendant's sanity beyond a reasonable doubt." The court pointed out that the record sustained just the contrary finding. Mutina was beyond a doubt insane. He was a dangerous killer. The court sadly noted,

The jury, lacking knowledge of the commitment necessarily flowing from a verdict of not guilty by reason of insanity, applied their own standards of justice in arriving at a verdict designed to ensure the confinement of the defendant for his own safety and that of the community. The evidence heard by them and the law given to them clearly played little part in their final verdict. . . .²⁷

CONCLUSION

So long as there is no uniformity as to the instruction in Washington, the problem will arise again. Putting the burden upon respective trial court judges measured against their abuse of discretion is a very unsatisfactory attempt to resolve this weighty issue. Retrials are costly and emotionally taxing to society. The Washington court might well be persuaded to overrule itself. Alternatively, the legislature might amend the statute to require that juries be instructed upon the subject. With the resurgence of interest in the insanity defense, this aspect of it merits another look.

²⁶ *Commonwealth v. Mutina*, 323 N.E.2d 294, 300-301 (1975); *Kuk v. State*, 392 P.2d 630 (Nevada 1964); *Roberts v. State*, 335 So.2d 285 (Florida 1976); *Ringgo v. State*, 339 So.2d 293 (Florida 1976); *State v. Babin*, 319 So.2d 367 (La. 1975); *State v. Williams*, 346 So.2d. 181, 190 (La. 1977); *State v. Gurley*, 376 So.2d 110, 111 (La. 1979); *State v. Hammonds*, 224 S.E. 2d 595 (North Carolina 1976); Missouri overruled its former practice of not permitting the instruction, joining this trend, in *State v. Pike*, 516 SW.2d 505 (Mo. 1974); *Lyles v. United States*, *supra*, has been overruled only as to the form of the instruction that is to be given on this subject. These jurisdictions require the instruction to be given: *Schade v. State*, 512 P.2d 907 (Alaska 1973); *People v. Cole*, 172 N.W.2d 354 (Mich. 1969). It is given as an informational instruction in Colorado. *People v. Thompson*, 591 P.2d 1031 (Colo. 1979); *People v. Beasley*, 608 P.2d 835, 838 (Colo. 1980); *People v. Hardin*, 607 P.2d 1291, 1293 (Colo. 1980); *People v. Osborn*, 599 P.2d 937, 939 (Colo. 1979). These jurisdictions allow it in certain instances: *Dipert v. State of Indiana*, 286 N.E.2d 405 (Ind. 1972); *State v. Shoffner*, 143 N.W.2d 458 (Wisc. 1966). One federal court has expressed the opinion that it is the better practice for the trial judge rather than for counsel in argument to give the explanation to the jury what the consequences of such an acquittal will be. *Catlin v. United States*, 251 F.2d 368 (D.C. Cir. 1957). *Catlin* is on much firmer ground, although it is the older decision, than the one case which holds contra on this point in the whole line of cases defining the subject in law, to wit, *Government of Virgin Islands v. Fredericks*, 578 F.2d 927, 934-936 (3rd Cir. 1978).

²⁷ *Commonwealth v. Mutina*, *supra*.

The Board's Work



by Steven A. Reisler

WSBA HONORS HENRY M. JACKSON

Spokane, September 11 — In a special off-agenda item, the Board of Governors voted unanimously in favor of a resolution honoring the late Senator Henry M. Jackson. President Steere, presiding over his last Board meeting, called upon the Bar to recognize and appreciate Senator Jackson's outstanding contributions, both as an active member of the Washington State Bar Association and as a public servant. Senator Jackson died suddenly on September 1, after 48 years of membership in the WSBA.

SECTION BUDGETS

Governor Pat Comfort reported to the Board that the majority of the Bar's sections have submitted satisfactory operating budgets for the upcoming fiscal year. Both the Young Lawyers and Administrative Law Sections requested WSBA subsidies. The Trial Practice Section did not submit a section budget. The Board unanimously disapproved the proposed budgets for the Creditor-Debtor Law Section and the Corporation Business and Banking Law Section. The Criminal Law Section plans to resubmit its proposed 1983-84 budget to include allocations for U.S. Supreme Court amicus brief preparation.

JUDICIAL RECOMMENDATIONS

The Judicial Recommendation Committee reports to the Board of Governors regarding the qualifications of candidates for judicial office. The Board has questioned whether the committee should have the authority to seek out qualified candidates for judicial office who would not ordinarily apply. The concern of some Governors is whether the committee's seeking out candidates will imply that the committee is predisposed toward those persons to the detriment of unsolicited candidates.

Olympia attorney Chris Messerve, Washington Women Lawyers representative and member of the committee, noted that the committee as a whole need not know whether an individual member of that committee has encouraged one lawyer to apply for judicial office. "Frankly," said Messerve, "it's the duty of every member of the Bar to encourage qualified lawyers to apply for judgeships."

By consensus, the Board agreed that it would be too difficult to formulate workable guidelines, and left it to the committee's sound discretion how, or whether, individual members may seek out judicial candidates.

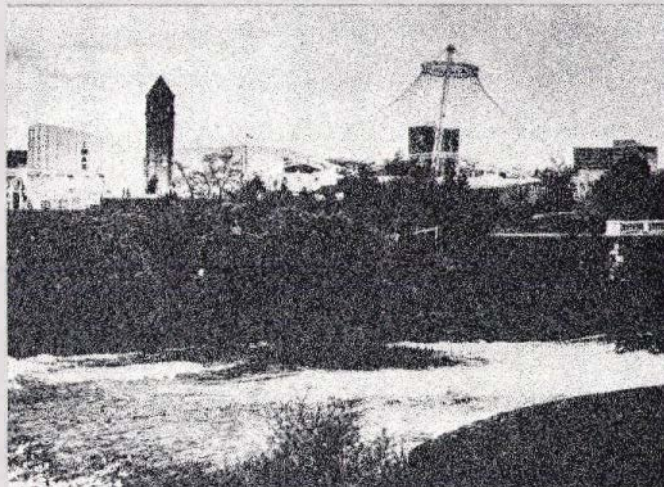


photo by Richard B. Kayne

SPOTLIGHT: SPOKANE

General Business Meeting, September 15

- The membership overwhelmingly approved a resolution calling upon the state legislature to increase judicial salaries. Washington's judges' salaries currently rank near the bottom of the fifty states.
- Two resolutions proposed by the World Peace Through Law Section regarding Central America were indefinitely tabled.
- The WSBA presented its highest award, the Award of Merit, to retiring Judges Eugene Wright and George H. Revelle. Judge Wright had served as a superior court judge for 12 years and 14 years on the Ninth Circuit Court of Appeals. Judge Revelle, of the King County Superior Court, had served 28 years on the bench and was Washington's senior trial judge.

THE NEXT MEETING OF THE BOARD OF GOVERNORS WILL BE: October 14-15—Hood River, Oregon

IOLTA Update

special to the Bar News
by **John R. Ruhl**

On September 14, the Washington State Supreme Court received a draft of a proposed IOLTA ("Interest on Lawyers' Trust Accounts") rule from a joint committee of the Washington State Bar Association and the Seattle-King County Bar Association.

The proposed IOLTA rule would amend DR 9-102 of the Code of Professional Responsibility to require Washington lawyers to convert their non-interest-bearing

John Ruhl is an attorney with the Seattle law firm of Sax & MacIver.

accounts into interest-bearing trust accounts for the deposit of their clients' nominal and short-term trust deposits.

The interest earned by the IOLTA accounts would be paid to an independent foundation established to disburse funds for various tax-exempt charitable purposes, including the delivery of legal services to low-income persons.

The joint WSBA-SKCBA proposal was drafted by a committee comprised of Paul W. Steere, 1982-83 WSBA President; James S. Turner, President of SKCBA; and Lowell K. Halverson and Charles A. Goldmark, Seattle lawyers.

Goldmark said that the proposed rule was drafted in accordance with a WSBA Board of Governors resolution adopted in July which endorsed the IOLTA concept (*See Bar News 37:8:49-50*).

Justice James M. Dolliver, Chairman of the Supreme Court Rules Committee, said he would submit the proposed IOLTA rule to an executive session of the Supreme

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Court in late September or October. Justice Dolliver predicted that the Court most likely will follow procedures similar to those followed by the Minnesota Supreme Court, which has adopted an IOLTA rule almost identical to the joint WSBA-SKCBA proposal.

If the Minnesota procedures are followed, the Washington Supreme Court most likely will publish the proposed rule in the Supreme Court advance sheets for a comment period of at least 30 days, Justice Dolliver said.

After the comment period, the Court will appoint one or more parties to file a petition seeking adoption of the IOLTA rule. It is likely that the WSBA will be appointed to be a sponsor of the petition, Justice Dolliver said. He said that the Court also will appoint one or more parties to present opposing arguments.

Following the Minnesota precedent, both the proponents and the opponents will be allowed to file briefs according to the normal appellate briefing schedule, Justice Dolliver said, and the case will be set for oral hearing on the regular Supreme Court docket.

Justice Dolliver predicted that oral arguments on the IOLTA proposal will not be heard before the Supreme Court's spring term, at the earliest, due to the preliminary comment period and the briefing schedule for the administrative proceeding.

According to the August, 1983, edition of the *American Bar Association Journal*, by early summer twelve states had approved IOLTA plans by state supreme court rule or by legislation. The states are (in order of approval): Florida, California, Idaho, Maryland, Colorado, New Hampshire, Minnesota, Oregon, Illinois, Nevada, Virginia, and Oklahoma.

The *ABA Journal* reported that as of June, 1983, bar associations in six other states had approved IOLTA plans for submission to their state supreme courts or legislatures: Hawaii, Massachusetts, New York, South Carolina, Vermont, and Washington.

Twenty-two other states were reported to be studying various versions of IOLTA plans. (See *American Bar Association Journal* 69:8:1036-40.)



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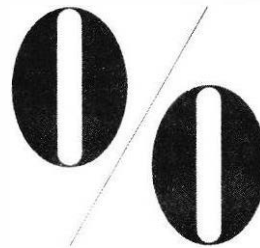
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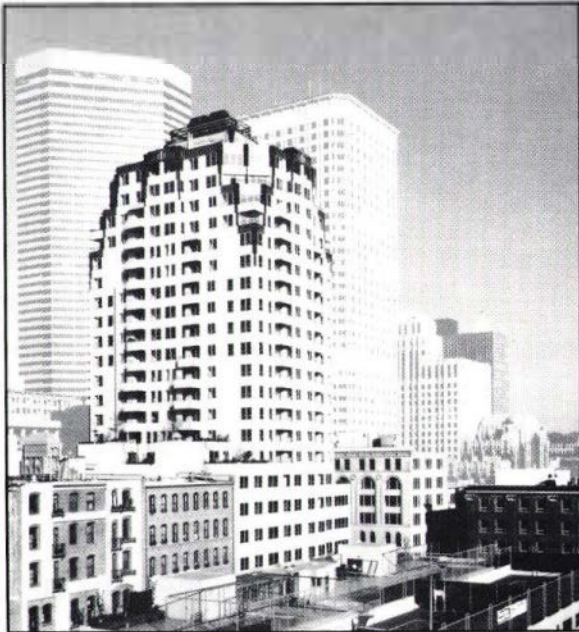
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Notes From the Academy

Edited by Professor William B. Stoebuck

ADMINISTRATIVE LAW. (1) (a) The combination of investigatory, prosecutorial, and adjudicatory functions in the Medical Licensing Board is not a per se violation of state or federal due process, nor does it violate the appearance of fairness doctrine. (b) RCW 34.04.115 prohibits ex parte consultations only during the pendency of a contested proceeding. *Medical Disciplinary Bd. v. Johnston*, 99 Wn.2d 466, 663 P.2d 457 (1983). (2) Claim for damages against telephone company that arises out of alleged negligent transfer of business telephone number does not lie within primary jurisdiction of Utilities and Transportation Commission. *Case of Robinson v. Pacific Tel. & Tel. Co.*, 118 Wash. 218, 203 P. 1 (1922), distinguished. *Moore v. Pacific N. Bell*, 34 Wn. App. 448, 662 P.2d 398 (1983). (3) Appellant's failure to give Director of Department of Labor and Industries notice of appeal of Board of Industrial Insurance Appeals decision was jurisdictional; superior court had no jurisdiction. *City of Spokane v. Department of Labor & Inds.*, 34 Wn. App. 581, 663, P.2d 843 (1983).

—J. M. Vache

CRIMINAL LAW AND PROCEDURE. (1) Grant of (transactional) immunity given to compel testimony of one who has been convicted and sentenced for offense about which he testifies, but whose case is on appeal at time of grant, does not affect validity of conviction or sentence (though it would bar new trial if conviction were reversed on appeal). *State v. Runions*, 100 Wn.2d 52 (1983). (2) Although statement that informant has given affiant information proven to be true and correct in the past will sufficiently establish informant's reliability for purposes of determining probable cause, statement that informant is "a reliable informant who has proven to be reliable in the past" will not. *State v. Woodall*, 100 Wn.2d 74 (1983). (3) Search and seizure issue that could have been, but was not, raised on first appeal may not be raised on second appeal from same conviction (although it may be proper subject for personal restraint petition). *State v. Sauve*, 100 Wn.2d 84 (1983).

—G. R. Nock

FAMILY LAW. (1) Escalation clauses for child support are valid if based upon percentage of obligor's income and if statutory criteria were observed when decree was entered. [Note. This decision resolves conflict between divisions of court of appeals]. *In re Marriage of Edwards*, 99 Wn.2d 913 (1983). (2) *Statutory* power to enter dissolution decret nunc pro tunc may be used only to correct ministerial or clerical error. Inherent *common law* power may be used only to effectuate important public policy. *In re Marriage of Pratt*,

99 Wn.2d 905 (1983). (3) Despite 1977 legislative amendment (instigated by grandparents) that enabled persons to petition for child visitation without showing "threshold change," grandparents have no greater claim to visitation than does any other non-parent. *In re Thompson*, 34 Wn. App. 643, 663 P.2d 164 (1983). (4) Although prior *final* decrees involving military retirement pay may be unenforceable and are not subject to collateral attack, a prior decree *not* yet final (appeal pending) that orders payments from military retirement pay is, pursuant to Uniformed Services Former Spouses' Protection Act, enforceable as to payments due after February 1, 1983, effective date of Federal Act. *In re Marriage of Wood*, 34 Wn. App. 892, 664 P.2d 1297 (1983).

—L. V. Rieke

LAND-USE PLANNING. If density requirements of zoning differ from general density policy of comprehensive plan, zoning controls. Comprehensive plan is only "general policy guide." As in previous state supreme court decisions, court rejects *Baker v. City of Milwaukie*, 271 Ore. 500, 533 P.2d 772 (1975). *Wildner v. City of Winslow*, 35 Wn. App. 77, 664 P.2d 1316 (1983).

—W. B. Stoebuck

LOCAL GOVERNMENT LAW. (1) None of defendant municipal organizations, participants in W.P.P.S.S. financing agreements containing "dry hole" clauses, had authority to make such agreements and are not bound by them. *Chemical Bank v. Washington Pub. Power Supply System*, 99 Wn.2d 772 (1983). (2) Business and occupation tax ordinance enacted by charter city is subject to referendum. Enactment of such tax is not a power limited to elected officials, is not administrative act, and is not necessary to support of state government. *Citizens for Fin. Resp. Gov't v. City of Spokane*, 99 Wn.2d 339, 662 P.2d 845 (1983). (3) Non-lead agency (county) that failed to question adequacy of Environmental Impact Statement at draft stage may not raise that issue for first time on appeal to superior court from Shoreline Hearings Board decision. *Kitsap County v. Department of Nat. Resources*, 99 Wn.2d 386, 662 P.2d 381 (1983).

—J. M. Vache

REAL PROPERTY. (a) Time-of-essence clause in real estate contract may be waived by seller's accepting late payments repeatedly, even though buyer made payments to collection agent, so that seller did not know fully about time payments were made. After waiver, seller could not cause forfeiture without giving buyer reasonable time to cure default. (b) Purchaser on real estate contract is not purchaser for value for priority purposes until he has acquired legal title by paying full contract price. Court says *Cascade Sec. Bank v. Butler*, 88 Wn.2d 777, 567 P.2d 631 (1977), did not impliedly overrule *Peterson v. Paulson*, 24 Wn.2d 166, 163 P.2d 830 (1945). *Reed v. Eller*, 33 Wn. App. 820, 664 P.2d 515 (1983).

—W.B. Stoebuck

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**Affidavit of
Husband Cited for Contempt**

*prepared by
Scott Candoo*

A great deal of time is wasted on various show cause calendars while counsel wait for one another to argue essentially the same argument over and over again. In the vast majority of contempt cases, there are only a few repeated excuses for not paying child support.

In order to save time, and also to allow those individuals who are not represented by counsel ready access to an affidavit which they can submit on their own behalf, I present . . .

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

In Re the Marriage of:)
)
)
) NO.
) Petitioner,) AFFIDAVIT OF
) HUSBAND CITED
) FOR CONTEMPT
)
) and)
)
) Respondent.)
)
)

STATE OF WASHINGTON)

County of Pierce) ss.

_____, being first duly sworn
on oath, deposes and says:

I can't/won't (pick one) pay money to my wife because:

- | | |
|--|-------------------|
| excuse(s) | check one or more |
| 1. I'm out of work. | _____ |
| 2. I've been sick _____ days / _____ weeks/
_____ months / _____ years. | _____ |

Scott Candoo is a Tacoma lawyer with the firm of Godderis & Candoo.

3. She doesn't use the money for the kids. _____
 4. My social security _____
 disability _____
 food stamps _____
 welfare _____ (select one
 money from Mom & Dad _____ or more)
 pension _____
 workman's comp. _____
 other _____
 has/have (pick one) been cut off. _____

5. I'm willing to go to jail. _____
 6. She left the house first. _____
 7. She doesn't let me see the children. _____
 8. I didn't have the address. _____
 9. She is shackled up with another man, _____
 let him support her. _____
 10. Those kids aren't mine. _____
 11. I used the money to pay my lawyer. _____

12. She's getting money from _____
 social security _____
 welfare _____
 food stamps _____
 her parents _____ (select one
 pension _____ or more)

workman's comp. _____
 boyfriend _____
 other _____

13. I've got a new family for which I'm not providing enough money. _____
 14. I'm emotionally distraught because my wife is always bringing me to court. _____
 15. I've got new debts for which I'm not providing enough money. _____
 16. I'm a chronic deadbeat (see attached note(s) from doctor/social worker/previous spouses/creditors/other). _____
 17. Other — _____

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SUBSCRIBED AND SWORN to before me this _____ day of _____, 198 ____.

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The Twenty-eighth Estate Planning Seminar

by T. Noble Foster
Director of Continuing Legal Education

The 28th Estate Planning Seminar will be held on October 27 & 28, 1983, at the Westin Hotel in Seattle. Sponsored by the Estate Planning Council of Seattle and the Washington State Bar Association for attorneys, accountants, trust officers, life underwriters, and financial planners, the 28th Estate Planning Seminar is the premier educational program for estate planners in all interested professions.

The seminar chairperson for this year's program is Nancy Evans, Assistant Vice President of the Tax Department, Trust Division of Rainier National Bank in Seattle. The seminar co-chairperson is Eric P. Van, a tax partner in the Seattle accounting firm of Peat, Marwick, Mitchell & Company.

An outstanding group of speakers has been recruited for the program. On Thursday, October 27, John DeBruyn, a Denver attorney with an LL.M. in taxation, will discuss "Subchapter S in Estate Planning"; George F. Velikanje, of Velikanje, Moore & Shore, Yakima, will cover "Principle, Income and Fiduciary Administration"; Dean John R. Price, of the University of Washington School of Law, will speak on the topic of "Non-Charitable Lifetime Transfers";

economist Edward R. McMillan will discuss "What the Estate Planner Needs to Know About the Financial Outlook"; Professor Gary C. Randall of Gonzaga University School of Law in Spokane will cover "Basic Changes and Section 1014 Problems"; a discussion of "Proposed Trust Legislation" will be analyzed by Mary M. Welk, Assistant Vice President and Trust Officer at First Interstate Bank in Seattle; and "Update of Techniques and Concepts for the Estate Planner in the area of Planning for Disability" will be discussed by George O. Holland, Ch.F.C., C.L.U. and general agent for the Union Mutual Life Insurance Company. Mr. Holland is the current President of the Estate Planning Council of Seattle.

On Friday, October 28, the delicate subject of "Counseling Survivors After Death" will be covered by two nationally-known speakers: Ann S. Kliman, M.A., Director of the Situational Crisis Service of the Center for Preventive Psychiatry, White Plains, New York, and Edward S. Schlesinger, Esq., New York estate planning lawyer.

Professor Randall W. Roth, Associate Professor of Law at the University of Hawaii School of Law, C.P.A. and lawyer, will discuss "Creative Estate Planning."

The important subject of "Marital Deduction Planning and the Q-Tip Trust" will be covered by Professor Stanley M. Johanson, of the University of Texas School of Law, Austin, Texas.

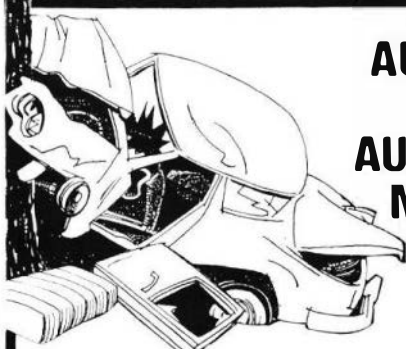
Former Special Trial Judge in the U.S. Tax Court, Washington, D.C., and now a partner in the Bellevue law firm of Lucas, Glase & Chicoine, Darrell D. Hallett will speak on "Valuation Strategies and Considerations: From the Planning Stage Through Litigation."

A comprehensive overview of "Recent Developments in State and Federal Legislation and Case Decisions" will be presented by Malcolm A. Moore, Esq., a partner in the Seattle law firm of Davis, Wright, Todd, Riese & Jones. Mr. Moore is the immediate past chairman of the Real Property, Probate & Trust Law Section of the American Bar Association.

Tuition for the two-day seminar is \$145,000, which includes admission to the program, luncheon on both days, and the complete set of published course materials. The program has been approved for 15.25 hours of continuing legal education credit by the Washington State Board of Continuing Legal Education, and application has been made for accreditation from the Washington State Board of Accountancy and the Washington State Insurance Commissioner.

The Westin Hotel in Seattle, at 5th and Westlake Avenue, has offered a special flat rate of \$80.00 for single or double occupancy for out-of-town registrants. The deadline for this special room rate is October 5, 1983. For information on room reservations, please telephone the Westin Hotel at (206) 624-7400.

To receive a registration form and complete brochure for the program, please contact Sherrie Hewitt at the Washington State Bar Association, 505 Madison Street, Seattle, WA 98104, or telephone (206)622-6021.



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BENTON-FRANKLIN COUNTY

by **ANDREW C. BOHRNSEN**

While the summer sun and gentle winds off the Columbia River have afforded great opportunities for pleasure in the desert, our Bar Association suffered a significant loss since this article last appeared. That loss was in the death of **Richard Knoeber**, a partner in the firm of Critchlow & Williams. Rich's passion for the law will be sorely missed by his fellow practitioners and the general public who came to rely upon him.

In the true tradition of athletic greatness, our baseball team continued to control the league. Many credit the top ranking to a win streak which occurred, purely by coincidence, while **Mark Kuffel** was out with torn ligaments in his knee.

In July, those of us who prefer more rigorous and challenging forms of athletic endeavors traveled to Westport to test the waters of the Pacific Ocean. Those who distinguished themselves included **Francois Forgette**, who justifiably received the **Mike Johnston** "he'll-die-before-we-hit-port" award. This repeat winner did not overshadow the efforts of **Pat Roach**, who begrudgingly accepted the award for the largest fish lost yet seen by two members of the crew. The rumor that **Phil Raekes** was observed tinkering with Pat's line shortly before the fish was hooked is still under investigation.

In the annual Bar Association Golf Tournament and family picnic, a new crop of winners appeared. Low net and closest to the pin went to **Jan Armstrong**, low gross went to **Andy Bohrnson** and long drive to **Mike Johnston**. As the sun set, **Gary Hugill** and **Scott Timmons** were fighting head to head in an eighteen hole playoff for the coveted high gross and high net honors. The festivities concluded with the installation of new officers, which included **Don Stancik** as president, **Wayne Campbell** as vice-president, and **George Fearing** as secretary-treasurer.

PIERCE COUNTY

by **GEORGE KELLEY**

Kim Foster, of Dolack, Hansler, Hulscher, Burrows, Dayhoff & Barline, acquired an unlimited hydroplane which he entered in the Seafair race under the sponsorship of Princess Yachts. The boat, being slightly under 30 feet in length, was too short to accommodate the name of his law firm.

Lloyd Baker, age 65, retired from active participation in the slowpitch leagues in Gig Harbor. Lloyd has been playing baseball longer than most members of the bar have been alive.

Stan King, who has been golfing almost as long as Lloyd has played baseball, recently shot a hole-in-one, the fourth of his career. It's all double bogeys from here, Stan.

Ed Hudson is running for Port Commissioner. Political opponents entered a fellow with an almost identical name against him in the primary. To avoid confusion, election officers will have "attorney" printed on the ballot following Ed's name, while the sound-a-like will also have his employment designated. Whether the "attorney" label aids his election is uncertain, but it is, at least, good advertising.

Margaret Spencer Bond has announced the opening of her office at 6311 Pacific Avenue where she shares office space and overhead with **Bryan Chushcoff** and **Edward Loughrey**.

SKAGIT COUNTY

by **DAVID WELTS**

Just how long has it been since the Skagit report graced these pages? Too long? Not long enough? It's all moot now, 'cause here goes. . .

Remember **Alfred McBee**? He was President of the lawyers back when the average age of what is now today's average practitioner was ten. He is also a *great* jury trial lawyer of six decades and an even better wit and friend of all attorneys.



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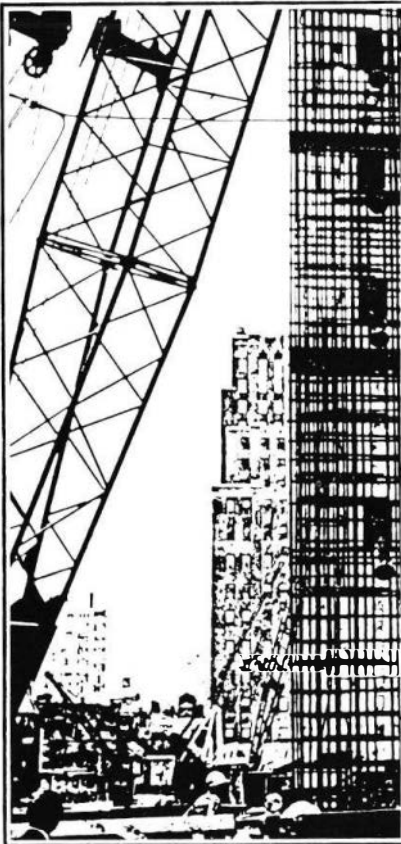
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Mac *claims* to have retired July 1. Those of us in the know believe this ploy was designed to gain attention at one of the finest roasts ever—by the Skagit-Island Bar—and, wouldn't you know it, to go home and save on the overhead. Some believe it. As for me, I'm keeping one eye peeled at counsel's table every time I go to court.

Congratulations to **Ted Zylstra**, newly elected to the State Bar Board of Governors, from Island County. That's right, *Island County*. They must have at least 12-15 votes over there out of 800 or so for the Second District.

By the way, why is it that Island County, comprised of Whidbey Island only, is Island County, whereas San Juan County (with a hundred islands including San Juan Island) is not Islands County?

My, how times have changed. It used to be that this column mentioned new lawyer faces. Now that they number so many, we instead simply document an old, allegedly retired, lawyer's name.

SPOKANE COUNTY

by JONATHAN C. RASCOFF

Goodbye Mr. Chips, 1983 Style—On September 12, 1983, a banquet honoring retiring professor **Charles Jens** of Gonzaga Law School was held at the Sheraton Spokane Hotel. Patterned after a celebrity "roast," the dinner was chaired by Gonzaga grads. **Jim Baker**, of the Lyons law firm in Yakima, and **Steve Steinberg**, in private practice in Upper Montclair, New Jersey. Affectionately known as "C+ Charlie" for the grade he most often gave, Professor Jens will be widely missed.

And so long, Mike—**Mike Ormsby**, the youngest person ever to sit on the District 81 (Spokane County) School Board, announced that he is retiring, due to the press of work and family commitments. Long active in local democratic politics, Mike is associated with the firm of Lukins and Annis in Spokane. Fellow associate **Bob Crotty** announced that he will toss his hat in the ring for the vacated position.



Briefly Noted

Carolyn Louthian and **Tari Eitzen** have announced the formation of Louthian and Eitzen, a law partnership concentrating in the area of domestic relations. In addition to her law degree, Tari holds a Master's degree in Social Work from the University of Colorado. . .

Tom Luciani has joined the firm of Underwood, Campbell, Brock and Cerrutti as an associate. Tom was formerly with the prosecuting attorney's office. . . **David Dressel** has joined Goss, Moe and Sampson as an associate.

Legal Issue—Congratulations to the following Spokane attorneys on their recent visits from the stork: **Mike McMahon**—girl; **Larry Weiser**—boy.

Seminar Teaches How to Sue Gov't

"Taking the Government to Court" is the focus of a day-long seminar offered by the National Lawyers Guild on October 21. The course will provide a basic overview of three major areas of litigation: employment cases, tort claims and civil rights suits. Speakers will include Kelby Fletcher, Mary Ruth Mann, Fred Hyde, Deputy King County Prosecutor Mike Duggan, Howard Pruzan and Bob Randolph.

The seminar is approved for 7.5 CLE credits. For more information or advance registration, call Bonnie Drew in Seattle at (206) 622-5144.

Nominations Open for 2nd Edward J. Devitt Award

Nominations for the second annual Edward J. Devitt Award for Distinguished Service to Justice are now open, according to an announcement by West Publishing Company, sponsor of the award. It will be made to a living federal judge who is deemed to have made extraordinary contributions to the advancement of the cause of justice.

All members of the federal judiciary appointed under Article III of the Constitution are eligible. Nominations for the 1983 award, which carries an hon-

orarium of \$10,000, should be in writing and include supporting material, and should be submitted by December 31 to Devitt Distinguished Service to Justice Award, P.O. Box 43810, St. Paul, MN 55164.

UPS Women's Caucus to Sponsor 10K Race

A 10-kilometer race along Commencement Bay in Tacoma will be sponsored by the Women's Law Caucus at the University of Puget Sound on Saturday, October 15. It will begin at the law school, at 950 Broadway Plaza, at 9:00 a.m., and continue along Schuster Parkway. The entry fee is \$7.00.

Pre-register before October 12 with Patty Gibbs or Mary Freeman at the Women's Law Caucus, UPS Law School, 950 Broadway Plaza, Tacoma, WA 98402, or register the day of the race between 8:00 and 8:30 a.m.

WLAA Elects Officers

The Washington Legal Assistants Association (WLAA) elected new officers and directors at its annual meeting held May 20, 1983. Officers are Mavis Johnson, President; Nancy Rogers, Vice President; Carolyn Stephenson, Secretary; and Iona Stenhouse, Treasurer. New directors are Sue Thorud, Tana Lowe and Denise Johnson.

For information about WLAA, write P.O. Box 2114, Seattle, WA 98111, or contact Mavis Johnson in Seattle at (206)622-3150.

ALA Regional Conference Planned

The Oregon Chapter of the Association of Legal Administrators (ALA) will sponsor a regional conference with the theme "Planning for Profits" on November 3-4 at the Red Lion Motor Inn-Lloyd Center in Portland.

The conference will include seminars on financial planning, microprocessor applications for law firms, lawful and effective collections practices, how de-



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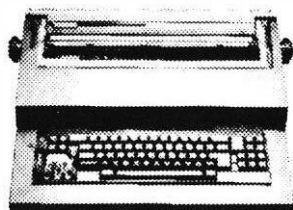
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Consumer Protection Act Amended

The 1983 Legislature amended the Consumer Protection Act in several significant respects. The provisions, which were effective July 26, 1983, are found in Chap. 288, Laws of 1983. Of particular interest are the following:

- RCW 19.90 (the Unfair Practices Act) is repealed.
- Civil penalties for violations of RCW 19.86.030 and RCW 19.86.040 are increased from \$25,000 to \$100,000 for an individual and \$500,000 for a corporation.
- The \$1,000 limit on treble damages for violations of RCW 19.86.020 is raised to \$10,000.
- In any private proceeding to enforce the Act pursuant to RCW 19.86.090, service on the Attorney General is required if an injunction is sought. Additionally, the Attorney General must be served with a copy of any appellate brief concerning application of RCW 19.86.

To implement the last change, the Attorney General requests the cooperation of the Bar in directing such pleadings to: Consumer and Business Fair Practices Division, Office of the Attorney General, 1366 Dexter Horton Building, Seattle, WA 98104.

DISCIPLINE

Reprimanded

Camas attorney **Robert W. Garver, Jr.**, was reprimanded by the Board of Governors on August 20, 1983. The disciplinary action was based upon findings that he had breached his fiduciary duty to a client by entering into a real estate transaction with her without full disclosure and without documenting the terms of the agreement between them, in viola-

tion of DR 5-104(A), DR 7-101(A) (1), and DR 9-102(B) (3).

James V. Grubb of Seattle received a Reprimand before the Board of Governors on August 20, 1983, pursuant to order of the Washington Supreme Court. Mr. Grubb was reprimanded for failure to disclose that he had lost trust property coming into his possession, and by his silence leading or attempting to lead his client and the person who had transferred the property to Mr. Grubb that the property was still in Mr. Grubb's possession. That conduct was found to be in violation of (CPR) DR 1-102(A) (4), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Tacoma attorney **Anton J. Miller** was reprimanded by the Board of Governors on August 20, 1983. The disciplinary action was ordered by the Supreme Court following a hearing in which it was found that Miller had attempted to defraud a gambling casino in violation of DR 1-102(A) (4).

IN MEMORIAM

Bellevue attorney **Terence J. Cafferty** died August 21 at the age of 38 in an aircraft accident. Mr. Cafferty graduated from the University of Washington in 1975 and was a member of Phi Beta Kappa. He graduated from the University of Washington Law School and was admitted to practice in 1978. In 1981, he formed the Bellevue firm of Cafferty & Lawrence.

Roberta E. Kaiser, 70, of Seattle, former King County divorce prosecutor and deputy prosecuting attorney, died August 26. Ms. Kaiser once headed the domestic relations department in Yakima County, and from 1957 to 1979 was legal counsel and director of the inheritance tax division of the state Department of Revenue. She was vice-president of Quota Club, president of Phi Delta Delta, Seattle chapter, and secretary of the Seattle-King County Bar Association. Ms. Kaiser was admitted to the Bar in 1941.



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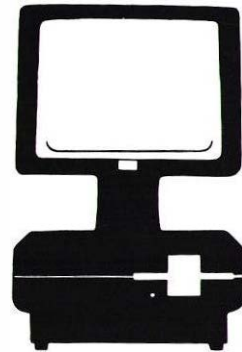
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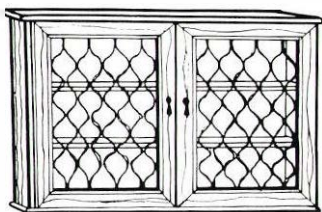
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