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WASHINGTON STATE BAR NEWS

NEW CONDON HALL: UNIVERSITY OF WASHINGTON SCHOOL OF LAW

MEMORANDUM

TO: All State of Washington Attorneys

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FEATURE ARTICLES

IN THE NEWS

DEPARTMENTS

Cover: New Condon Hall: University of Washington School of Law

Letters

Commendation

Editor:

In line with the continual search for superior performance, most particularly in the trial courts of this state, it would be appreciated if you would publish the names of the following attorneys to whom individual commendatory letters have been given for their superior trial performance. The names of the attorneys and the type of case in which they did a most superior representation of their clients before the undersigned this past year is as follows:

Robert A. Berst—malpractice case resulting in a $502,210 verdict against pediatricians and major Seattle hospital.

Peter Berzins—second degree burglary as a public defender, jury verdict for defendant.

Seaton Daly, Jr.—assisting from prosecuting attorney's office on a rape, assault and burglary multiple-count case.

Russell Newman—defense of assault, jury civil case.

Preston Niemi—defense of a personal injury guest-host case, jury.

Fred Dore—inverse condemnation case for jet aircraft noise in Port of Seattle.

Graham Fitch—attorney for claimant in a workman's compensation case.

David Oswald—deputy prosecuting attorney in connection with a burglary, assault and rape case, principal counsel.

Byron Ward—deputy prosecuting attorney as to a first degree assault case.

It appears to the undersigned that identity and type of case where attorneys have been top performers might be of general interest to the bar so that lawyers could seek these attorneys out for help in preparing their own cases and likewise for ideas in trial procedures and preparation in which each of these attorneys has fully proven himself.

JUDGE HORTON SMITH
Seattle

Who Said N.O.W.?

Editor:

Although I appreciated "N.O.W. Is Not the Time to Discriminate Against Women Lawyers" by Dustin McCreary in the January State Bar News, I would like to take exception to the title of that article.

There seems to be little logic behind the choice of that title, except for the gratuitous pun on N.O.W., and quite aside from that, the implication—as opposed to the point of the article—is that there was, or in fact will be again, an appropriate time to discriminate against women lawyers.

Not only does the pun seem not worth this possible derogatory implication, but also it makes me again question why any reference to women's rights provokes the male majority to become coy and cute.

SUSAN NEWCOMER
Seattle

List Specialties

Editor:

I read with some interest the proposal for certification of specialties contained in the State Bar Journal. As a few of you may know I have been most vociferous in support of that "radical" minority of the Bar which has been advocating the necessity of specialization for some years. My lack of membership in the American Bar Association is primarily induced by the same reason; that Association has wholly failed to make any serious attempt at working out procedures for certifying and permitting specialties even when given ideal opportunities to do so, such as its study some years ago of the dual practice of law and accounting, has adopted a position opposed to certification. Specialties in the practice of law are long overdue. A failure to permit specialization in one form or another would, actually, sound the death knell of the sole practitioner. The breadth of the legal field in general makes it somewhat ridiculous to assert that any sole practitioner can know all the law, yet in the unholy scratch for revenues, which will be accentuated by the expected oversupply of lawyers (if it ever arises), every sole practitioner attempts to handle everything—sometimes with dire results for his clients even in such relatively simple matters as divorce practice. You are to be congratulated that such a procedure has been proposed. I advocate its adoption and implementation.

I discern, however, one serious shortcoming in the plan proposed. The advertising of specialties when certified as to a particular practitioner is limited primarily to informing other attorneys of that fact. In my opinion this neither solves the problem, helps the sole practitioner or serves the public. The certification of specialties program has as its only conceivable basis the principal of serving the public better. Incidentally, of course, if properly done it will help the sole practitioners to stay alive, but its primary justification is the idea of better serving the public.

Anyone who has been connected with any of the several lawyer referral systems knows the problem: Countless calls are received from people who want the best attorney for guardianship; the best attorney on divorce practice; a good probate attorney and the like. The elimination of any prohibition against informing the public generally of a specialty where a lawyer has one is, it seems to me, a necessary step if such a program is to adequately serve the needs of the public. I suspect that this limitation of the breadth of advertising will leave everyone except the large firms doing things in precisely the same way that they now are. Making attempts to later change this portion will probably encounter the same intransigence on the part of the profession that has thus far obstructed the adoption of any certification process. It seems to me that the present limitations on advertising which are probably as much enforced as any of our canons of ethics are adequate safeguards on its misuse.

ROBERT M. REYNOLDS
Tacoma

More Is Too Much

Editor:

My thanks for publishing the letters of Mr. Robert E. Conner and Mr. Mark H. Adams in your January 1974 edition. I have long struggled with the two-horned issue of sin and obscenity—it seems so complicated. Should I say this? Should I view that? Should I do this or that, and if so, with whom?

And knowing all the while that the entire fabric of Our Society hinged on these ever recurring questions. After all, as Mr. Conner points out the history we were taught proves that all of the great civilizations who relaxed their moral guard (all of the great civilizations, I guess), were conquered by less sinful civilizations.

In fact, I had longed for the day when the legislature or the courts would tell me what I *should* do, and how, and with whom (or what?)—and even how often. Perhaps a Uniform Code of S----- Conduct? I thought relief was on the way when the President appointed a non-consenting adult majority to the U.S. Supreme Court, but, alas, *Miller*, another evasion.

Worse yet, as Mr. Conner points out, obscenity is such "a cancerous invasion into our social framework" we shouldn't even debate it any longer. Like Alexander Pope, cited by Mr. Conner, I have noticed that when you talk about It, sure enough, you want to do It.

But Mr. Adams conclusively rebuts the findings of the national commission on pornography by citing the fact that following arrests of deviates of all ilks, Tacoma police have found "'porno' material . . . in the subject's car or room." Now we know—just as surely as marijuana leads to heroin, pornography leads to criminal sexual activity.

And startlingly simple, from Mr. Conner the answer—you cannot see, film, enact or write whatever the legislature says you cannot legally do.

Mr. Conner is right—we have talked about it enough. In fact I think I have talked about it too much, and I had better stop. . . .

WILLIAM F. NELSON
Seattle

Eliminate JCR 11(1)

Editor:

It seems to me Justice Court (JCR) Rule 11(1) requiring verification of pleadings could be eliminated since the same is not required under Superior Court (CR) Rule 11.

WILLIAM BROSCHE, Jr.
Seattle

Two Lawyers Reprimanded

The Board of Governors, on recommendation of the Disciplinary Board, on November 2 administered formal reprimands to Warren W. Russell of Friday Harbor, in a matter based upon a charge of failure to file an income tax return, and to Joseph S. Kane of Seattle, after a disciplinary proceeding in which it was found he neglected a legal matter and in a second instance was neglectful and unprofessional in handling a claim.

Washington Judicial Council Study

The Washington Judicial Council is beginning a study of problems encountered in the operation of the new criminal rules of procedure for superior courts. All practitioners are encouraged to send comments to Dean R. Sargent, staff attorney, Washington Judicial Council, 258 Condon Hall, University of Washington, Seattle, Washington 98195.

The President's Corner

One of those remarkable coincidences occurred recently, the sort of thing which, taken seriously, could destroy the credibility of the President's Corner for some time to come.

Within a single hour I encountered two of the most interesting members of our Bar; one so liberal that his mere membership in the Bar weighs him down with an almost insupportable burden of guilt, the other so conservative that he is obsessed with the fear that there will be an erosion of the distinction between trespass and trespass on the case.

Each, during a vivid nightmare the previous night, had seen the minutes of a meeting of the Board of Governors held on April 9, 1990. Both kindly gave me permission to use in this column the notes each had taken immediately upon waking.

The Liberal's Nightmare

The meeting was called to order at 9:00 A.M. at the Racquet Club, Palm Springs, California. Present were the two governors from Seattle, the six governors from eastern Washington and Neil Hoff, commencing his 32nd year on the Board.

The minutes of the previous meeting were read and approved.

The president gave his annual "State of the Bar" report. He stated that Bar membership has declined to 2,000 of whom 500 are in private practice. The large firm in Seattle and the large firm in Spokane account for over 80% of the lawyers in private practice.

The president further reported that the elimination of the Code of Professional Responsibility had considerably improved the economic climate of the profession. For example, in 1989, the two lawyers practicing in Bellingham, population 56,000, had each netted over half a million dollars.

The president reported that a number of aggressive and troublesome lawyers had resigned from the Bar shortly after the landmark decision of the United States Supreme Court which, after years of chaotic and absurd judicial tampering, finally held that indictment or information establishes a presumption of guilt which can be rebutted only by clear, cogent and convincing evidence.

The report of the Bar Examiners was received and approved. Of the 1,289 applicants, 83 had passed the regular three day examination but of those 83 only 20 had passed the special fourth day "wisdom and judgment" examination.

A motion was made to exclude Catholics from membership in the Bar. The proponents argued that this was merely another logical step in the process which had commenced with the exclusion of women and had gone on to the exclusion of persons of swarthy complexion regardless of race, creed or national origin. The motion was defeated, five votes against and four votes for, after an impassioned argument by Governor Patrick F. X. Kelly.

The treasurer reported that Bar finances were in excellent condition. He attributed this primarily to elimination many years ago of the dangerously subversive committees on Legal Aid, Contemporary Problems, and Continuing Legal Education and the institution of the surcharge of $1,000.00 per year on the dues of young lawyers and governmental lawyers.

The treasurer went on to say that he, in common with all the governors, abhorred the status quo and felt a duty to strive for improvement of the profession. With that in mind he recommended abolition of all remaining sections and committees of the Bar except the Committee on Law Office Economics and Management and the Bar Examiners. His recommendation was approved with the amendment that the two man Disciplinary Board should be retained because of the continuing, although sharply diminishing, possibility of hair below the collar complaints.

At the suggestion of the executive director the annual convention of the Bar for 1991 was scheduled for the months of April and May in Paris.

A cocktail break was taken at 10:00 A.M. The Board reconvened at 2:00 P.M. and adjourned at 6:00 P.M. after a four hour discussion failed to produce agreement on whether to invest the Bar's surplus funds in U.S. Treasury bills or in General Motors 2005 9% convertible bonds.

The Conservative's Nightmare

The meeting was called to order at 11:00 A.M. at Volunteer Park in Seattle. Present were the two law student governors, the five lay governors and the two lawyer governors.

The minutes of the previous meeting had been mislaid.

The president reported that our Bar is seriously below the standard required for continued Federal subsistence payments to lawyers. The president pointed out that 5% of the families in this State do not have a lawyer in the immediate family and that the maximum allowable percentage under Federal law is 2%. In order to achieve immediate compliance it was decided by acclamation to forthwith admit any person to the Bar who had: (1) graduated from high school or had equivalent "life experience" *and* (2) expressed in writing or orally to any member of the Board an interest in law and stuff like that.

The report of the Judicial Selection Committee was unanimously approved. It is henceforth the position of the Association that admission to the Bar shall not, standing alone, disqualify a person from holding judicial office.

Upon motion unanimously approved, the Old Lawyers Section was abolished.

The report of the Legislative Committee was approved on motion. It is the position of the Bar that all acts, except those committed by a person or entity engaged in business for profit, should be decriminalized.

One of the governors expressed concern that these two positions might be confusing, perhaps conflicting. However, the executive director reported that the two motions as passed were identical to two recent resolutions of the American Bar Association and, therefore, there was no further discussion of the matter.

The president reported two recent disbarments, one for entering into a contingent fee agreement and the other for returning a lawyer's subsistence check with a sarcastic note.

In the contingent fee matter the former lawyer had devoted three years to the case, finally losing in a split decision of the Supreme Court of the State of Washington after a second trial, so that fortunately he had not actually collected any fee. It was nevertheless unanimously agreed that the gross immorality of contingent fee agreements under any circumstances clearly dictated disbarment.

In the subsistence check return case it was unanimously agreed that the affront to the Department of Health, Education, and Welfare had so seriously jeopardized the profession in the eyes of that Department that disbarment was necessary.

Upon motion unanimously passed the position of the lawyer advisor to the lay Disciplinary Board was eliminated.

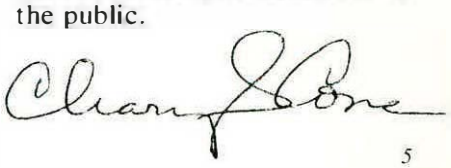
Upon agreement of the two governors still in attendance the meeting was adjourned.

Hopefully, there is a discernible point to this bit of fiction. Fear that the Bar will not respond to its obligations to its members and to the public and fear that the Bar will respond absurdly are equally unrealistic.

It has become more and more apparent to me, as I have discussed professional problems and concerns with an ever increasing number of the members of our Bar, that there is no such thing as a stereotype lawyer. More importantly it is just as clear that there is no stereotype young lawyer, old lawyer, trial lawyer, office lawyer, governmental lawyer, big city lawyer, or small town lawyer.

It is, in fact, the individuality of lawyers expressed and exercised in a lawyerlike manner which provides assurance that the Bar will progress and that its progress will be realistically consistent with our special obligations to our profession and to the public.

Cleary Cone, Rush Stouffer, and Fred Velikanje



WHAT'S WRONG WITH OUR JUDICIAL ARTICLE?

by Willard J. Roe

Recently stories have appeared in publications on revision of the judicial article. Typical of misstatements is that reported by Tom C. Clark, former associate justice of the U.S. Supreme Court, W.L.R., Vol. 48 No. 4, 1973, 808:

> "The operations of courts of limited jurisdiction (district justice of the peace, municipal courts) are *all* financed from fines, fees, bail forfeitures and the like, collected by them in both civil and criminal filings. This means that financing court operations may run counter to two decisions of the Supreme Court in the United States,"

citing *Tumey v. Ohio* and *Ward v. Village of Monroeville*. Fortunately, this error by Clark was commented upon by Professor LaVerne Rieke, as found in footnote 26 in which he suggests that as to the fee justice of the peace *only* these two cases would appear applicable.

It is regrettable that the loose language, as found in Tom Clark's observations is seriously considered by some as an indictment of all of the courts of limited jurisdiction in this state. Judicial reform requires careful analysis, dissection, separation and simply does not yield itself to statements like, "our courts are out of date," "they're unconstitutional, let's change the judicial system." Who of you has read the cited cases or the footnote or the excellent article by Judge Morell Sharp which appeared in 24 Wn. St. Bar News 13, No. 5, 1970? That article is just ignored, ever answered.

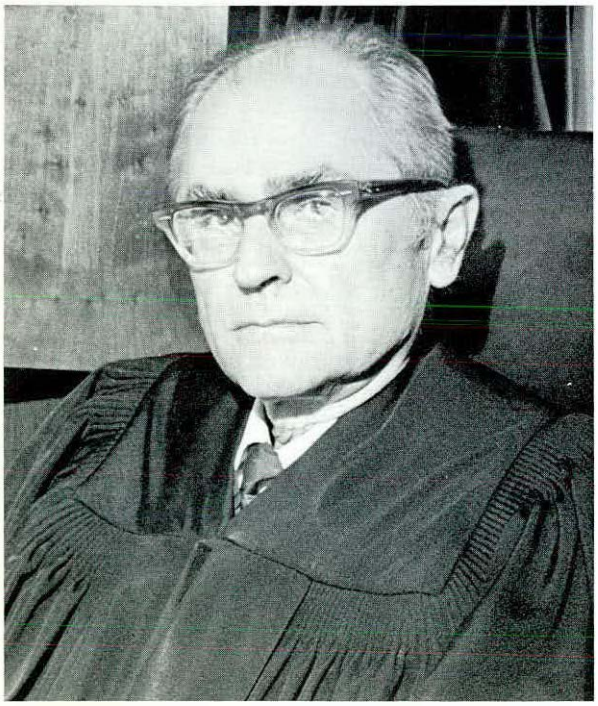
Beware of any change merely for change's sake. We can sometimes tolerate the cold better than the cure. I'm particularly impatient with those who urge that because Illinois or New Jersey have modified their court systems, therefore let us be current and modify ours, without ever discussing what the situation was in those two states which brought about the modification. Every judicial system is impaired. There's no perfect way to select judges; there's no perfect way to run the courts, nor should a hardship in one case be levered to destroy the system. Yet there are those who cry "unify the courts" who say one thing and listeners hear another. A slogan is no substitute for reason.

Presently we have a unified court. Washington has a modern system. Its superior court is a court of general jurisdiction which tries all matters, equity, legal, criminal, not like the courts in various states which are diverse, where there are separate courts which try only equity matters or only criminal matters, or only probate or only juvenile.

Willard J. Roe has been on the Spokane County Superior Court since 1961. He received his LLB in 1940 from Gonzaga Law School, and his LLM in 1942 from Catholic University, Washington, D.C. He was engaged in the private practice of law continuously from 1942 to the date of his appointment to the Court, except for a period of service in World War II in the China-India-Burma theater, followed with service with the United Nations Relief and Rehabilitation Service in China and Europe. Judge Roe has been a professor for many years at Gonzaga Law School. He has lectured throughout the Pacific Northwest on various subjects including Evidence and Constitutional Law and has conducted numerous special seminars at FBI and other law enforcement conferences on pertinent subjects. He has had articles published by the National Trial Judges' Journal and the Gonzaga Law Review.

Efficiency, expediency and uniformity should not be the only criteria of the quality of courts. The courts must be such as to attract capable men to be judges because justice can be defeated by inadequate judges. Should there be local administration or some local influence felt? Should there be a recognition of the simple fact of life that there are minor matters in every system of jurisprudence which demand speedy, fair, unencumbered trials and inexpensive appeal? Interestingly enough, in practically none of the articles advocating a new judicial article, all of which criticize the courts or the method of either discipline or retention of judges, is there any consideration or mention of what should be done to attract good men to the bench, or what should be done about the rights of litigants. These are the forgotten matters.

The state of Washington has 39 counties. There's a tendency on the part of some people to gear their thinking strictly to one county, such as possibly King, Pierce or Spokane, thinking what's good for them is good for all the rest of the counties. Any judicial article, to be worthy of adoption, must be good not only for the large counties but also for the smaller ones. Many counties have but one superior court judge. In some cases, there's one or two or even three counties who have but one judge. It is impossible



to adopt an article which is based on specialization which is one of the suggestions of those who want to adopt a new court system, and having some judges concentrate on juvenile, some on criminal trials, etc. It might be good for New Jersey, a small state, it might be good for Illinois, but that doesn't mean it's good for the state of Washington. Paraphrasing a thought from *Miller v. California*, 37 L Ed 2d 419, people in different states vary in their attitudes, problems and conditions; this diversity is not to be strangled by the absolutism of imposed uniformity.

Our present article, Article 4, provides for four levels of court; the supreme court, court of appeals, superior courts, (which are courts of general jurisdiction) and courts of limited jurisdiction, or as they're called, inferior courts. It also specifically spells out the jurisdiction of the various courts, provides for de novo appeals and limits appellate appeals to matters in excess of $200.

Presently, judges are theoretically selected by the people. In actual fact, most receive their appointments from the governor. Of the present 98 superior court judges, 22 have been elected, and the rest appointed by various governors. In an effort to avoid this political aspect, as well as the prohibitive and discouraging expense of having to run for office shortly after appointment, the Nebraska or the Missouri plans or modifications have been proposed. I am personally unconvinced as to the best way of selecting a judge.

All of us can find instances of poor appointments by the governor, as well as good appointments, and defeat of a good judge in an election and defeat of poor candidates. In the ultimate analysis, even the best judicial article will not work unless there are highly qualified judges.

For the purposes of this article, I will discuss two proposed revisions; one by the Citizens' Committee, and the other as found in SSJR 113.

Judicial Selection Procedure

I do not oppose section 8 of the Citizen's Committee bill. It embodies the concept that vacancies would be filled by the governor from a list approved by a commission and there be retention elections. However, while such may correct some of the evils of the present system, it has its own problems. An unpopular decision, though correct, could unmake a good judge if the timing is coincident. It could conduce to a political decision.

After much publicity, this provision was deleted in the legislature as proposed in SSJR 113. Thus much of the pressure generated for the adoption of a new judicial article was dissipated. SSJR 113, which would emerge from the legislature, would make no change from our existing judicial article in the manner of selecting judges.

Those judges who don't do the work should be subject to discipline and removal and if they're unqualified or senile, they shouldn't be judges. I am not opposed to Section 8 of the Citizens' revision on discipline and removal, or Section 14 of SSJR 113. However, those who are interested might wish to read an article by Kurland which appears in 36 U of Chicago LR 665 (1969) where the California system embodied above has been severely criticized, and reference was made to it in a dissent by Justice Douglas in *Palmore v. U.S.*, 36 L Ed 2d 342.

Administration of Courts

Both of the proposed articles vest administration of the courts in the supreme court, subject to legislative change. The Citizens' Committee section 19 added a proviso it could be changed by the legislature only "for good cause shown." That is a novel restriction on an act of the legislature.

I am opposed to administration in the supreme court and I favour establishment of judicial districts with local control subject to court rule. What is the evidence that Washington's courts are not properly administered now?

Even though administration might be lodged, theoretically, in the supreme court, in effect it will be lodged in some administrator, because no chief justice is going to have time to do all of this. Thus the lawyers, litigants and the people, this will effect, will lose much of the responsiveness and closeness of their courts.

There can be no defense for the unequal work load amongst the judges of the various counties. I have compiled statistics and charts showing that for every county which has above the statewide average in population and filings, there's an adjacent county which is below.

There should be redistricting, without question, on a regional basis. There should be at least two or three judges in every district. But the administration should be regional, not as proposed in the judicial articles, in Olympia. The courts ought not be administered from Olympia, any more than should be the schools. Centralization in administration in the supreme court would result in more delays and expense.

Jurisdiction of Courts

The present judicial article carefully spells out the jurisdiction of the various courts. The Citizens' Committee bill, section 1, establishes, in addition to the present levels of court, an additional court, called a district court, but retains other courts of limited jurisdiction. Why this proliferation in the name of unification? What's the purpose? Is it possible to justify a proliferation of the courts under the concept of unifying them, even though many counties do not have district courts? That proposal also provides for their abolition by the legislature which could create a single level trial court, but leaves unsolved the question of what happens to the other mainly rural 200 justice of the peace courts. This proliferation is further carried out in SSJR 113. It simply adds another court, the district court, and authorizes a single level court embracing superior court and district court for the entire state or region, but not other justice of the peace courts. It would seem if this has merit it should apply to the entire state and all justice courts. If not, the problems arising, particularly on appeal, jurisdiction, etc., will indeed be complex. Inherent in this concept is the attack made on the de novo appeal which, fortunately, Washington, along with many states, wisely provides. If there's to be one unified trial court, then all courts of limited jurisdiction, whether they're called district courts, justices of the peace, municipal courts, etc., should be abolished. There should be none. There is not justification for keeping some courts of limited jurisdiction and not others. All stay or all go. The jurisdiction and function is fundamentally the same.

The next question then, is how is the minor judicial business to be processed? Some say, in effect, crank everything through the superior court, presumably even small claims. If matters of limited jurisdiction were docketed with superior court files, would traffic violations have to wait four, five, six or eight months to take their place along with the regular court calendar? Would the superior court rules in reference to pre trial conferences and other things apply to these matters? I don't think anyone can seriously urge this. It's contrary to all experience and contrary to the simple facts of life. A natural, different procedure simply must be applied.

It has been well said that both proposed judicial articles are gravely inadequate and deconstitutionalize the courts because neither sets out the jurisdiction of the courts. Both leave that up to an act of the legislature. There will be, no doubt, pressure upon the legislature at every session and mini-session to change jurisdiction, to enlarge the courts of limited jurisdiction to that of greater or concurrent jurisdiction. Then there will be judge shopping and there is no assurance that any person may have a supreme court to do any work or that all appeals may be limited to the appellate courts, except in certain stated cases. The present judicial article sets out the jurisdiction of the courts so that the litigants may know exactly what may be expected. This is wise and should not be sacrificed for expediency or, in effect, leaving it up to the legislature at every session.

Utilize Court Commissioners

I would favour, if there is going to be a revision of the judicial article, that the board of county commissioners or the superior courts, as in other states and in federal jurisdictions, be empowered to appoint court commissioners, magistrates, trustees or referees to handle such minor matters, with a right of review, as provided in reference to court commissioners now. They are supervised by the superior courts and are free of complaint. This would answer the objection found in an article in 24 Washington State Bar News, page 6.

Significantly, all of the states which have adopted this proposed judicial article or some ramification of it—Colorado, Idaho, Iowa, Illinois—have all made provisions for magistrates or some such person to try expeditiously matters of less importance.

Of interest is an article appearing in the Oregon Law Review, Vol. 51, No. 4, summer of 1973, by Kenneth J. O'Connell, Chief Justice of the Supreme Court of Oregon. He discussed reorganization of the courts in that state, and in reference to the cases which are handled by courts of limited jurisdiction, he makes this statement:

> "[T]aking a realistic view, I shall proceed upon the assumption that any plan for consolidation of the trial courts of Oregon is not likely to be accepted unless provision is made for the assignment of the 'less important' cases to judges making up an echelon of the judiciary below that of the circuit judges (superior court judges)."

Our supreme court of the state of Washington in *Hendrix v. Seattle*, 76 Wn. 2d 142 in 1969 said in reference to judicial systems designed to administer criminal law and prosecution for lesser offenses in a fashion more summary than that reserved for the more serious kinds of crimes punishable by terms of imprisonment or death, that the need for courts so organized as to be capable of trying the less serious criminal offenses with dispatch, seems more imperative today than in our early days. This principle was quoted and affirmed in *Eggan v. State*, 4 Wn. App. 384 (1971). If it applies to criminal cases, perforce it applies to civil matters also.

It is true that all cases are important and it is sometimes misleading to speak of some cases that are less important. Actually, they may be most important to an individual, but the simple fact remains that some cases have greater weight. A shoplifting charge could not be compared to a first degree murder charge. A petit larceny should not be compared to a first degree burglary. There are different safeguards, different procedures and different penalties. They simply cannot be treated alike, nor do the parties want them treated alike. Many of us or our clients have been involved in matters of minor importance, whether it might reflect a small debt that is owed or a traffic citation on speeding. We would like it to not be given the grand treatment, but to be dealt with speedily and disposed of and not made a matter of record. Thus these matters of minor importance should be assigned, according to Judge O'Connell, to magistrates serving under the direction and supervision of the presiding judge of the circuit (superior) courts. Under his suggestion, the magistrates could be given jurisdiction over most of the matters now dealt with in the district, municipal and justice of the peace courts, including minor traffic violations, small claims, preliminary hearings in felony cases, etc.

Advocates of this proposed judicial article simply seem unable to accept the fact that a small claim of $100, $200 or $300 should be dealt with differently than a claim involving $1,000,000 or that a petit shoplifting is not murder first.

To change this system would further imperil the courts because necessarily the superior court procedures, with its felony cases, its multiple lawyers, its complicated, complex issues, takes

(Continued on page 31)

ETHICS, LAWYERS, AND EDUCATION IN THE LAW

by Thomas Ehrlich
Dean of Law
Stanford University

One of the many consequences of the Watergate tragedies has been an outpouring of indignation at the legal profession. So many of those involved were lawyers. Editorial writers throughout the country point accusing fingers at the bar. They ask: What went wrong? What is going to be done about it? Wasn't Shakespeare right—"The first thing we do, let's kill all the lawyers?"

Law schools have been a particular target; after all, they train lawyers. Why isn't the ethical training adequate? Or if it is, why doesn't it stick? One of my favorite newspapers, *The Milwaukee Journal*, put the point this way:

> **Some law educators would rather beg off from trying to instill moral sense in budding lawyers, and bar exams can hardly screen out those who lack it. But surely it can be taught and made to stick that every lawyer by definition is first and always an "officer of the court." The bar is an arm of the bench, equally committed to the sole cause of truth and justice and law abidance. A lawyer may serve the interest of a client or employer as best he can, but only within that framework.**

The list of alleged Watergate misdeeds by lawyers is chilling: Directing and committing burglary; destroying evidence; bribing witnesses to remain silent; counseling perjury; and more.

I am in the paradoxical position of believing that there are major problems of legal ethics and professional responsibility that must be faced by the organized bar and by law schools, but also that Watergate has relatively little to do with those problems. Let me take the last point first because it can be dealt with more briefly.

Many of the alleged Watergate crimes involved lawyers. But they were not scandals because they were done by lawyers; nor, on the whole, were those who committed them acting in their capacities as lawyers. Burglary is a crime. It is obviously wrong for a lawyer to commit burglary. But it is not wrong because he or she is a lawyer, nor does the crime raise ethical questions that are peculiar to the legal profession.

In my view, lawyers are subject to no higher ethical code than other mortals except in regard to moral standards that are embodied in law. Some would go further and argue that professionalism in law requires stricter morality in all dimensions of human conduct.

But that issue aside, few would dispute the assertion that lawyers do have a special burden to ensure that their conduct not only is lawful but appears to be lawful—and clearly so.

Most issues of legal ethics involve conflicting claims to a lawyer's loyalties. Some of those conflicts may be between the interests of a lawyer's real or potential clients; other conflicts may be between a lawyer's obligations to a client and his obligations to the legal system. Such conflicts may concern quite common legal matters.

A husband and wife ask a lawyer to prepare a will for each of them. At some point, one may

want to revise his or her will without the knowledge of the other. If so, the lawyer will face a conflict of interest. Should the lawyer advise his two clients of this potential conflict at the outset?

Other problems of conflicting interest, of course, can be much more complex. This is particularly true in the criminal field, where troublesome conflicts can arise between the lawyer's responsibilities to defend his client and his responsibilities as an officer of the judicial system.

I do not pretend to have followed all details of the Watergate affair. But insofar as I am aware, only a few troublesome issues of legal ethics have been raised during the whole proceeding.

One example is whether Mr. Wilson could properly represent both Mr. Ehrlichman and Mr. Haldeman or whether, on the contrary, the potential of a conflict of interest between them should have precluded such representation.

A second set of issues may involve Mr. Mardian, formally a Justice Department lawyer and then an official of the Committee to Reelect the President.

Reportedly, his first knowledge of the Watergate burglary coverup came in his role as a lawyer for the Committee. Assuming this was so, what should he have done? Traditional legal ethics require a lawyer to inform law-enforcement officers on learning that a crime is going to be committed. But in this case, just whom should Mr. Mardian have informed?

Perhaps Watergate raises many questions of legal ethics that have escaped my notice.

But my underlying point is that the major scandals were not scandals that involved lawyers acting as lawyers; rather they involved lawyers acting as administrators. And if there are lessons to be learned from the tragedy, certainly one of them is that the risks are higher whenever governmental affairs are run by nonpoliticans—men and women without prior experience of accountability to the public. That seems precisely what happened here.

Paradoxically, many people have claimed that Watergate shows politicians are just crooks. But the claim is wrong. Politicians were not the dramatis personae of Watergate; had they been, it might not have happened.

A second lesson certainly should be that guidelines for government bureaucrats are both lacking and much needed. But such guidelines should not be needed to avoid burglary, perjury, and the like. Whatever one's code of conduct, those should be excluded.

If Watergate is not a symbol of a break-down of legal ethics, it does serve as a catalyst for rethinking basic issues in the realm of lawyers' professional responsibilities. What are the roles of the legal profession and law schools in that realm?

The practice of law is regulated by an agency within each state. Admission to the bar and practice as a lawyer is entirely a state matter, except in regard to practice before federal courts and agencies.

As a general rule, the supreme court of a state is the chief governing body of the legal profession in the state, and that court delegates to some agency responsibility for developing rules of conduct, state bar examinations, and enforcement procedures. Generally, the state supreme court must approve all rules of conduct and the application of those rules to particular individuals.

Some states have what is called an integrated bar, which means that all practitioners must be members of the bar association. California is one example; Wisconsin is another.

In many states, however, the bar association is a voluntary organization in which practicing lawyers may or may not take part. They are like the American Bar Association, which is a wholly voluntary organization on the national level.

The American Bar Association adopted model standards of professional conduct soon after the turn of this century; those standards were not revised until 1970, when a new Code of Professional Responsibility was prepared. A number of states have adopted that Code wholesale. Many others have adopted pieces of it while maintaining their own provisions on some matters.

What are the rules established by the organized bar to guide the conduct of lawyers? The new Code of Professional Responsibility includes nine Canons of Ethics:

1. "A lawyer should assist in maintaining the integrity and competence of the legal profession."
2. "A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available."
3. "A lawyer should assist in preventing the unauthorized practice of law."
4. "A lawyer should preserve the confidence and secrets of a client."
5. "A lawyer should exercise independent professional judgment on behalf of a client."
6. "A lawyer should represent a client competently."

7. "A lawyer should represent a client zealously within the bounds of the law."

8. "A lawyer should assist in improving the legal system."

9. "A lawyer should avoid even the appearance of professional impropriety."

Following each Canon, the new Code includes a series of so-called "Ethical Considerations" and then a series of "Disciplinary Rules." Only Disciplinary Rules have real punch, and many key issues are not covered by those rules.

One of the thirty-two Ethical Considerations listed under Canon 2, for example, is that "the basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer. . . ." Further, "the rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer. . . ." But nothing in the Disciplinary Rules requires lawyers to provide legal services without regard to potential fees.

Rather, the Ethical Considerations under Canon 2 are aimed largely at advertising and solicitation. The bar has long had strict rules against all but minimal advertising and solicitation of clients; in one way or another, a major share of the rules are directed to this issue.

Contrary to what I suspect is the view of most laymen, the standards of legal ethics are clear on many points. Two may be of special interest in light of the Watergate scandals.

First, if a client comes into his lawyer's office, affirms that their conversation is within the lawyer-client privilege, and then reveals a plan to commit a crime, what is the lawyer to do? There is no question—the lawyer should go to the police. The plans of a client to commit a crime and the information necessary to prevent the crime should be revealed by the lawyer as part of a broader duty to the courts and to society.

Second, what if the client has told the lawyer he was in one place when a crime was committed but says that he can find a friend who will corroborate a different story? Again, the rule is clear: The lawyer may not knowingly use perjured testimony or false evidence in the course of conducting a case.

I do not mean that there are not complex and difficult ethical questions involved in conducting criminal cases, as in civil cases, but the so-called "guilty client" problem is rarely one of them.

It should come as no surprise that most clients do not tell their lawyers that they are "guilty." Although a lawyer may suspect that he would vote for conviction were he on the jury, his job is to present the strongest case for his client consistent with the code of ethics; as lawyer, he is not a juror.

Yet the lawyer also has responsibilities as an officer of the court. Agonizing questions often arise concerning conflicting obligations to court and client. To what extent should a lawyer use all devices that, in his view, his client would use were the client blessed with the expertise of the lawyers? To what extent should the lawyer try to take a more independent approach?

These issues are often acutely difficult in civil litigation, particularly in cases involving large, publicly-held corporations with shares that are constantly traded. As lawyer for IBM, for example, who is your client? The present stockholders? The potential stockholders? The board of directors? The management? Others? The interests of these groups may be quite different, even in conflict. The Code of Professional Responsibility adopted by The American Bar Association gives little help.

This failing is even more pronounced in the codes of most states, which are far less detailed.

California is an example. Even though the California State Bar is one of the best state bar organizations in the country, its code is silent on these and many other difficult issues. A new set of standards has just been proposed for the state, and it represents a major step forward in many areas. But even the new code ducks some of the troublesome questions.

At least three clusters of serious problems involving legal ethics face the organized bar today. The first is the one I have been discussing—the ambiguity of the rules on many complex points, particularly those involving conflicts of interests.

A second, even more severe problem is the lack of adequate enforcement mechanisms to ensure that the rules are followed. A third problem is a lack of standard ensuring that individual lawyers will represent those needing legal services. The second two of these problems will be explored in a continuation of this discussion in a subsequent issue. □

(Dean Ehrlich's article is being reprinted through the courtesy of the Stanford Observer.*)*

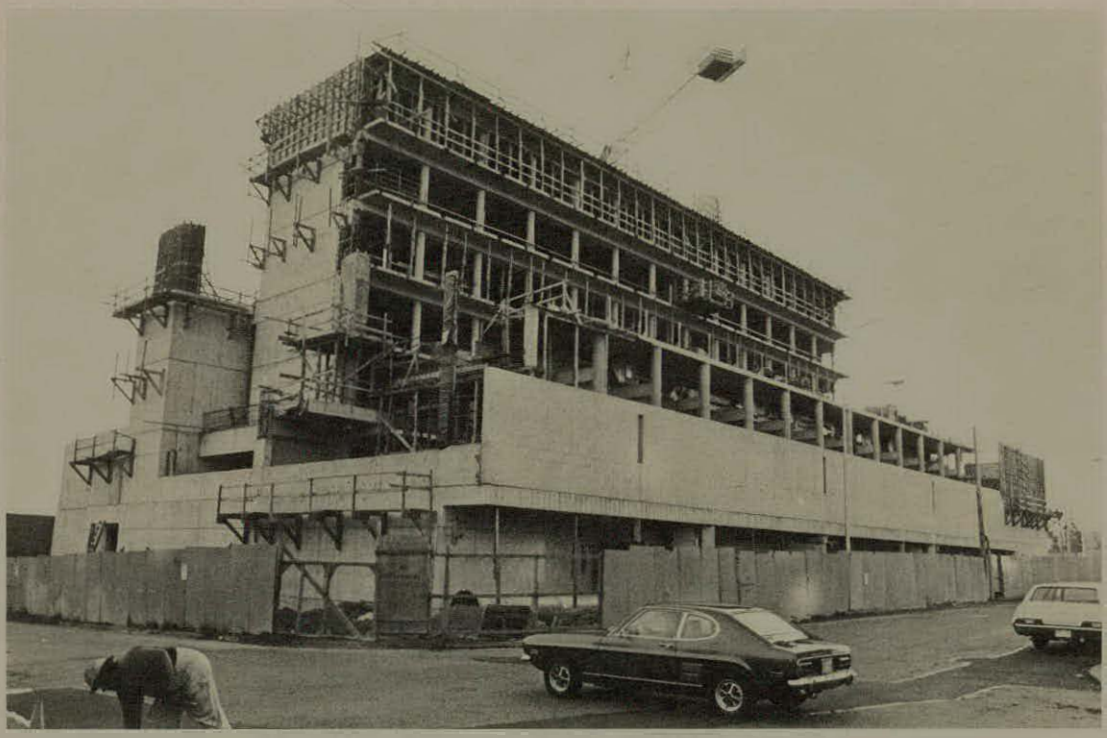
From Old Condon to New Condon

by Marian G. Gallagher
Professor of Law
University of Washington

The University of Washington Law School's current (and third) moving schedule forecasts the opening of Spring quarter classes in new Condon Hall, an eight-story concrete structure on Campus Parkway between Roosevelt Way and 12th N.E. Some past and present residents of old Condon feel nostalgic quivers about trading ivy-covered Gothic for 8,500 cubic yards of concrete, leaded panes for concrete exterior sunshades and gargoyles for starkly unadorned lines (most architects and the new building's admirers call these uncluttered lines; it is the quiverers who use the word "stark"). Hardly anyone favors exchanging a site on the Quad for exile beyond the Ave, except possibly a few alums who never have found the entrance to the parking garage. And for them, relief will be less than overwhelming. Parking around new Condon Hall will be no more plentiful than around old Condon. It merely will be easier to see from one's automobile that this is so.

The plan to relinquish a traditional building on a convenient site has generated recurring inquiry about reasons, and that is the question we address here.

S.E. corner; main entrance visible at upper left.



N.E. corner; library reading room in lower foreground.

Old Condon, when it was opened in the early 1930s, was one of the finest law school buildings in the United States. In part it still is, but only for a law school the size and shape of the one that moved into it forty years ago. Methods in legal education have changed and the Law School program has changed. The adoption of small sectioning for first year classes, of increased seminar requirements for second and third year students and the establishment of post-graduate programs all increased the demand for more and smaller classrooms as well as for graduate student studies and additional faculty offices. Student activities, including the beginnings of clinical studies and the enlarged Law Review staff, require space for offices, interviewing and conference. Old Condon was built for a small student body in large classes. New Condon has been planned for a slightly larger student body (from the present 455 to 500) meeting mostly in small classes. The largest classroom seats only 180 (against the 245 in old Condon) and usually will be divided by a sliding partition. Spaces for small classes and seminar meetings have been quadrupled.

The Law School's tight fit in old Condon may have been most clearly visible to the public when portions of the book collection were forced into boxed storage in a Burien warehouse, but Law School program changes were equally determinative. Lawyer explorers of old Condon who remember it in the 1930s and 1940s have discovered, even before the Books to Burien episode, that the present old Condon is not the original old Condon anyway. There now are faculty and graduate student studies replacing the basement bookstack, and faculty and librarians' offices replacing the University janitorial headquarters on the ground floor of Smith Hall. For purposes of definition here, "studies" are distinguished from "offices" not only by location but also through their miniaturization and windowlessness. The Smith basement faculty offices are of varying sizes larger than the studies and have ceilings criss-crossed by furnace pipes and windows looking as though they were designed to shoot arrows out of. Another part of the Smith basement, where the University earlier stored extra plumbing and costumes belonging to the Drama Department, has been converted to a seminar room with numerous pillars arranged in a manner which allows four and one-half students

to be hidden from the professor, plus a storage stack combining long high stackranges with narrow aisles and 3 to 5-foot clearance under pipes for boxes, from which only short strong or tall skinny library workers can retrieve materials. The high ceilings on the second floor of old Condon have been decked, extending the mezzanine faculty corridor and offices; offices for faculty or staff have been built into the faculty library, the receiving room and the stack floors 2 and 2M. On stack floor 2, where the Documents library settled down, the uprights formerly supporting metal shelves remain at 4½-foot intervals in the office, an inconvenience which seems inconsequential if one remembers that they are holding up the ceiling. There are other partitionings and cranny crammings on the list of changes, but the sample becomes overly long.

The new building will increase the Law School's net square footage from approximately 50,000 to 64,000 square feet, enough for the Law School to fit more comfortably than in Condon and Smith, but not enough for the comfort to last. The new building is "Phase I" of a projected larger building. "Phase II" plans have been approved in schematic form intended to provide at an undetermined future time an additional 45,000 net square feet devoted principally to library expansion, an appellate moot court room, student and clinical activity spaces and graduate student studies.

It is not possible to detect strong surges of optimism around the Law School about the speedy funding of "Phase II." In the meantime, the new building's sealed basement will provide an additional 10,000 square feet for expansion upon installation of a sprinkling system.

The major portion of the book collection will be on open stacks in new Condon, with study carrels on each of the five stack floors as well as tables in the reading room. Transferring some 200,000 volumes from multiple locations into single integrated order, reuniting split-up sets and collections is not the easiest project we could undertake at the Winter-Spring break, and one week may not be enough time in which to do it neatly. The U.W. Law Library therefore will be closed to all but law students during the examination week (March 16 to 23) and to everyone during the break (March 24 to 31st). If all goes as planned, the School and the Library will be back in business April 1. □

S.W. corner from Campus Parkway.

The Board's Work

Extracts from the minutes of the meeting of the Board of Governors December 7-8, 1973, at the Inn at the Quay, Vancouver, Wash.:

Discipline

It was voted that a lawyer's petition that he be allowed to resign as a member of the Washington State Bar Association and that his name be stricken from the roll of attorneys in the State of Washington be accepted and forwarded to the Supreme Court.

In accordance with Rule 11.6 of the "Rules for Discipline of Attorneys," it was decided that developments relating to the involvement of Egil Krogh Jr. in the disciplinary processes of the Washington State Bar Association be released to the news media as they occur and that appropriate information be given to the news media concerning the Bar Association's procedures relating to the handling and disposition of such matters.

A formal reprimand was administered to Fred N. Hoover of Seattle.

Watergate Resolutions

It was voted, 5 to 4, that the Board of Governors not adopt any Resolution or take any position on the subject matter known as "Watergate" at this time.

Meetings — Places and Dates

It was decided that the Annual Meeting in 1976 in Honolulu be held between the dates of November 9 and November 17.

It was agreed that the appeal and review procedure for the bar examination as outlined by the Chairman of the Board of Bar Examiners in his letter of November 13, 1973, to the Board of Governors be amended by providing that no person could serve as a member of the Review Panel for an examination in which he had participated as an examiner and that with that amendment the program and procedure be approved.

Law Clerk Program

It was moved, seconded and carried that the Bar Staff in conjunction with the Board of Law Examiners and the Law Clerks Association prepare and submit to the Board a program and suggested procedures for improving the administration and qualitative results of the Law Clerk Program.

Young Lawyers Section

A. It was voted that the Chairperson of the Young Lawyers Section be invited to attend the meetings of the Board of Governors as an ex-officio member of the Board and that the attendant expenses be the obligation of the Bar Association.

B. It was voted that designated spokespersons for the Young Lawyers Section be authorized to appear before the appropriate legislative committees speaking in support of a Resolution adopted by the Board of Trustees of the Young Lawyers Section with reference to limited decriminalization of marijuana. It was specifically made a part of this motion and agreed that such spokespersons would make it clear at the time of such public appearances or statements that they were speaking only for the Young Lawyers Section of the State Bar Association and not otherwise.

C. It was agreed that the Young Lawyers Section not be authorized to take a public position with reference to a "Watergate" resolution as adopted by its Board of Trustees.

D. It was noted that a Resolution adopted by the Board of Trustees of the Young Lawyers relating to sexual conduct between consenting adults be referred to the Criminal Law Section for consideration and recommendation.

E. The Board of Governors adopted the Resolution of the Young Lawyers Section Board of Trustees relating to the Legal Services Corporation as its own and confirmed its previous position in support of Senate Bill 2686 and authorized the Young Lawyers Section to publicly declare its support of 2686 and to contact the Washington delegation in the National Congress and to otherwise promote its view with reference to this Bill.

Committee on Economics and Law Office Management

The request by the Committee on Economics and Law Office Management that the Committee name be changed to "Office Practice Committee" was approved.

Americanism Committee

It was agreed that at the request of the Americanism Committee, that committee's name be changed to "Freedom Under Law Committee."

Parole Board Hearing Officers

It was moved, seconded and carried that the recommendation of the Corrections Committee as outlined in its chairman's letter of October 31, 1973, be adopted as the position of the Board of Governors. The pertinent parts of said recommendation are that the position of Parole Board Hearing Officer not specifically require the applicant to be an attorney, provided. however, lawyers be given credit equivalent to other experience and provided further that in the event the position is filled by a layman, he be required to have legal training as to the receipt of evidence and be instructed in legal and correctional aspects of the law in this field.

Committee on Professional Responsibility

The Committee on Professional Responsibility was requested to submit to the Board of Governors a formal opinion on the use of personalized license plates with possible professional connotations for use on automobiles.

Local Bar Presidents

It was voted that an additional meeting of Local Bar Presidents be approved for the current fiscal year subject to (1) the meeting be held within the State, (2) each Local Bar Association be limited to one representative, either its President or a person designated by the President, (3) participants in the meeting being reimbursed for mileage plus $25 for one day's per diem. The Board further offered the full cooperation of the Bar Staff looking toward the success of the meeting.

Legislative Program

It was voted that the Board approves and adopts as its own the report contained in the letter of December 4th, 1973, of Edward N. Lange, Chairman of the Bar Association's Legislative Committee, except that (1) The Board takes no position on the adoption of the proposed Criminal Code pending a recommendation from the Bar Association's Criminal Law Section and other interested sources, (2) the Board takes no position on Senate Bill 2320 and (3) the Board suggests that House Bill 62 be redrafted in consultation with the Department of Social and Health Services and re-submitted to the Legislative Committee and the Board preferably in time for the Board's consideration at its January meeting.

Bar Association Investment Program

It was decided that an Investment Program Subcommittee to be composed of the Treasurer, one other member of the Board and the Executive Director be established on a permanent basis to supervise the investment of the Bar Association's Funds, within the restrictions as originally outlined in the June 4th, 1971, letter from the then Treasurer of the Bar Association to the Seattle-First National Bank and as elaborated on in the minutes of the Board of Governors from its meetings in November of 1973 and in December 1973. It was further made a part of the motion and agreed that James P. Curran of the Seventh District be named to the subcommittee and that the full committee therefore be composed of James P. Curran, Richard H. Riddell and G. Edward Friar.

Annual Meeting Resolution

It was moved and seconded that the Resolution adopted at the September 1973 Annual Meeting of the Bar Association on the subject of decriminalization of the possession of marijuana in certain quantities and under certain circumstances be made the official position of the Washington State Bar Association in accordance with the By-Laws of the Association. The motion failed, with there being 4 votes for the motion and 4 votes opposed to the motion.

Bar Examination

It was voted that the Board recommend to the Supreme Court that if approved by the Supreme Court, the Admissions Rules be amended so there shall be no limit on the number of times any applicant can take the Bar Examination but that after the third unsuccessful attempt at the Bar Examination, each such applicant shall thereafter wait one year between submitting applications to take the examination.

COG Committee

It was decided that in order to clarify the duties and responsibilities of the COG Committee and to delineate ways by which the COG Committee could be of further service to the Board of Governors and to the Bar Association that the following be areas of activity in which the COG Committee should operate, subject to the supervision of and with the final determinations to be made by the Board of Governors:

(1) The COG Committee has a continuing and on-going responsibility for making inquiry and thereafter recommendations for possible changes in all areas relative to the structure and organization of the State Bar Association.

(2) That on or before May 1 of each calendar year the COG Committee should submit to the Board of Governors its recommendations for Committee membership and suggested Chairpersons for Committees for the Board's consideration for appointment to serve for the ensuing fiscal year.

(3) The COG Committee should make itself and its individual members available to the Bar Association's Committees and Sections on a limited liaison basis to assist such committees and section at their request.

(4) The COG Committee is to undertake all other projects assigned by the Board of Governors.

Petitions for Re-Instatement After Disbarment

A. It was voted that the Petition of Harold Victor Johnson that the Board of Governors recommend to the Supreme Court that he be re-instated as an active member of the Bar Association be denied.

B. It was voted that action on the Petition of Arthur S. W. Chantry that the Board of Governors recommend to the Supreme Court that he be re-instated as an active member of the Bar Association be deferred to the January Meeting of the Board of Governors pending the receipt of further documents and information to be furnished to the Board of Governors by the Petitioner. □

Education and Uncertainty in Environmental Law

On February 1, the Attorney General and the Department of Ecology held a seminar significantly subtitled "A Workshop in Plain English." The State Environmental Policy Act (SEPA), the Shoreline Management Act (SMA) and their latest legal developments were explained to citizens. Charles Roe, Chairman-Elect of the Environmental Law Section, Jerome L. Hillis and Robert F. Hauth had key roles along with Attorney General Slade Gorton.

Attempts to make "plain English" part of SEPA implementation is part and parcel of report recently done for the State of Washington. Prime recommendation of the study was that some state agency should be given regulatory authority over SEPA and Environmental Impact Statements (EIS). Watch the next legislative session.

A recent Superior Court decision in Island County decided that a county's determination that no EIS was required for a recreational home development on Puget Sound was not reviewable since the county had no written record of its decision. The case was remanded. Word to the wise: Prepare your administrative record when making SEPA decisions. Incidentally, *Roanoke Reef* has been modified on reconsideration. SMA permit requirements apply even if a project was started before the SMA's effective date if the necessary governmental permission is found unlawful.

The Washington Land Use Association is sponsoring a seminar on compliance with Land Use Regulations (February 4 and 5, 1974, Seattle, Washington, Plaza Hotel). Land Use is the heart of proposed national legislation by Senator Henry M. Jackson; also Congressman Mike McCormack as to thermal power plant siting.

The Tussock Moth likes to eat new growth from Douglas Firs and other trees. U.S. Forest Service (Department of Agriculture) has a draft EIS on use of DDT to control the moth. Comments on the draft (obtainable thru U.S. Forest Service, Attention Mr. David Graham, Portland, Oregon) will presumably be received until mid-February. Any concern to your client? If not, how about parking lots? The Department of Ecology has suspended their complex air pollution source regulations. EPA, faced with some 255 lawsuits nationwide, is continuing their parking permit program. (More on this next month.)

Finally, the Energy Crisis! (What will next month's crisis be?) EPA in a position paper to Congress last December noted that "Hasty measures taken now to solve short-term energy shortages may lead to environmental problems that will haunt us for a long time to come." As good a point as any to note that the State of Washington has the Brookings Institution of Washington, D.C. under contract to study and develop basic growth policy options for Washington. Citizen participation is central—what is your idea?

Joel Haggard
Chairman, Environmental Law Section

Twenty Years Ago

Sacramento has "bridal" path. So the *Bar News* quoted the Seattle Municipal News article which added that there were places where riding horses could be obtained also. Very convenient for brides!!

Births

Alaska: Former Seattle attorney **Walter H. Hodge**, Cordova, stated he expected to be appointed to the bench. Suggested someone buy his furniture, succeed him in his practice but reserved the right to purchase a one-half interest at the end of four years and then added: "Conditions in the future look expecially good in view of the probable development of the Katalla oil fields . . .!"

Yakima: **Ronald R. Hull** withdrew as prosecuting attorney to become assistant U. S. District Attorney. He was succeeded by **Donald J. Clark. Jack M. King** became deputy prosecutor.

Ellensburg: **Spencer D. Short** elected President and **W. R. Cole**, Vice President of the Kittitas County Bar.

Cowlitz County: **John Calbom** left the county to open in Moses Lake.

Herb Springer became associated with Imus & Marsh in Kelso.

Willard Walker joined **Ronald Moore** and **Jerome Walstead** in Kelso.

Vancouver: **Virgil Scheiber** and **Ned Hall** opened in the Adams Building as did **Sanford Clement.**

William C. Boettcher was admitted to practice.

James R. Gregg, Robert L. Avery, John L. Wynn, C. Dean LaRowe and **William C. Klein** commenced practice there.

Don Blair and **David Hutchison** formed a partnership.

Irwin Landerholm joined Robinson and Morse.

William Church and **Robert Avery** appointed deputy prosecuting attorneys.

Olympia: **Jim Maddock** appointed clerk for Judge **Matthew W. Hill** replacing **Keith Callow** who became a King County Deputy Prosecutor. **Dick Buchanan** left as Judge Donworth's clerk and **Glen Harmon** was appointed.

Hewitt Henry, prosecuting attorney, appointed **Haydn H. Hilling** deputy.

Rudolph Naccarato brought suit to prevent State Retirement Board from acquiring office in Seattle.

Seattle: **Harold Olsen, Francis Holman** and **Andrew Williams** became partners of Holman, Mickelwait, Marion, Black & Perkins.

Theodore LeGrow and **Lewis H. Johnson** became partners in Summers, Bucey & Howard.

Story Birdseye withdrew from Jones & Grey to join Herbert O. Landon.

Frederick C. Peterson and **John L. Vogel** announced their new partnership.

Frank J. Carrig, Jr., opened in the Dexter Horton Building.

Bernard Burke and **Boris Kramer** opened in the American Building.

Robert B. Allison opened in the Marion Building.

William H. Simmons became a deputy prosecuting attorney.

Professor **J. Gordon Gose** of the U of W Law School was teaching at the U of Cal.

Crossed the Bar

Yakima: Lawyer is martyr. So **Roberta Kaiser**, reporter for Yakima, described **G. Robert Huston**, 34, who was shot down by a disappointed father in a child custody case.

Seattle: **Robert McCormick**, 48.

Leopold M. Stern, 80, survived by a son, **Edward F. Stern**, and son-in-law, **Bernard Reiter**, both lawyers.

Gilbert L. Whitley, 56.

The *Seattle Daily Journal of Commerce* says: "The best diplomats are those who think twice before saying nothing."

David J. Williams

Briefly Noted

New CLE Tax Handbook Available to Bar

A new CLE practice manual, Washington State Taxes: Substance, Administrative Remedies, Trial Practice, now is available to lawyers through the State Bar Office.

The manual, softbound, 8½ by 11 inches, contains 279 pages and is priced at $12.50. John T. Piper of Seattle was chairman and chief editor.

The contents and authors:

Overview of State Taxation, S. E. Tveden, director of the Department of Revenue Interpretation and Appeals Division; Basic Structure of Washington Excise Taxes, James A. Furber, Tacoma; Exemptions and Constitutional Limitations, Graham H. Fernald, Seattle; Property Tax Law, Michael L. Cohen, Seattle; Valuation, Harley H. Hoppe, King County Assessor, Seattle; Property Tax Procedures, Administrative and Court, E. M. Sandy Murray, Tacoma; Excise Tax Hearings, Department of Revenue, and What You Should Know About the Board of Tax Appeals, James R. Stanford, member of the State Board of Tax Appeals, Olympia.

Seminar on the Ocean

A seminar on "The Ocean: Who Gets What" will be presented by the University of Washington Feb. 22-24 at Lake Wilderness Continuing Education Center. Considered will be the political and legal controversies about allocation and management of ocean resources and regions. Faculty includes William T. Burke, UW law professor. Information is at 325 Lewis Hall, UW 98195.

Approved Law Lists

Names of the law lists and publishers which have received certificates of compliance with standards of the American Bar Association Standing Committee on Law Lists for 1974 editions have been received in the State Bar Office. Lawyers wishing to ascertain if certain publications are ABA-approved Law Lists may write or call the Bar Office (206-622-6054; 505 Madison, Seattle 98104).

Practice Manual Supplements Available

The 1973-74 Supplement to the Washington Lawyer Practice Manual is now available for distribution. Orders should be mailed with check enclosed to the Seattle-King County Bar Association, 320 Central Building, Seattle 98104.

The cost of this 221 page supplement is $10.00.

For those who attended the 1973 Bridging the Gap Seminars, a 25% discount on the supplement is being offered. If you send a check for $7.50 be sure you note that you attended these seminars.

Hoover Reprimanded by Board of Governors

A reprimand has been administered to Fred N. Hoover of Seattle by the Board of Governors for unprofessional conduct in the handling of a divorce proceeding. Hoover was reprimanded for failure to reasonably respond to a request for information by a client and failure to respond to a State Bar investigation of the matter.

Three CLE Seminars On Tap This Spring

A busy CLE season gets underway with a three-city March seminar on Personal Injury Practice Under the Comparative Negligence Act.

Also scheduled are Spring seminars on the new bankruptcy rules and on developments in the state's new Dissolution of Marriage Act, which has been undergoing a legal "shakedown" in its first months.

The Comparative Negligence seminar will be presented in Spokane March 15, Seattle March 23 and Olympia March 30. Sponsors are the State Bar CLE Committee and the Trial Practice Section. F. Lee Campbell of Seattle is chairman, and panel members are Judge Edward E. Henry, Lawrence D. Silvernale, Willard Walker, Sam Levinson, James D. McCutcheon Jr., James M. Lindsey and Henry Woods of Little Rock, Ark., a leader in the American Trial Lawyers and former Arkansas State Bar president.

The new Section of Creditor-Debtor Rights and CLE Committee will present the Bankruptcy Rules seminar, aimed at the general practitioner rather than the specialist, April 19 in the Davenport Hotel in Spokane and May 3 in the Olympic Hotel, Seattle. It will be the first seminar using the Davenport's facilities, and the Seattle seminar will be from 1 to 6 p.m., the first time a Friday afternoon CLE seminar has been presented in several years. Chairman is Willard Hatch of Seattle.

The Dissolution Act seminar will be presented by the Family Law Section and CLE Committee May 17 in Seattle and May 31 in Spokane.

Editor's Notes

Washington's new comparative negligence statute is now safely codified at RCW 4.22.020 and, in the absence of last-minute changes by the Legislature, will be effective on April 1, 1974. In view of the unanswered questions left by the statute, there has been some debate as to whether the Legislature chose April Fool's Day as the effective date with tongue-in-cheek.

Much of the preliminary debate about the Washington statute centers around the impact of counterclaims between parties whose negligence has concurred to produce injury to them both.

Assume a hypothetical:

A and B own buildings separated by a party wall. A negligently starts a fire in his building. The fire spreads to B's building. As it is about to be brought under control, gasoline negligently stored by B explodes, destroying both buildings. A's loss is $100,000. B's loss is $125,000. Of the negligence which caused the total loss, 40% is attributable to A and 60% to B.

A is entitled to recover $60,000 in damages against B, which is his $100,000 in damages reduced by the 40% of negligence attributable to him; B is entitled to recover $50,000 in damages against A, which is $125,000 reduced by 60%. What judgment should be entered in a suit between them: $60,000 in favor of A against B, and $50,000 in favor of B against A; or only $10,000 net in favor of A?

A's liability carrier, by the terms of its policy, has agreed to pay on behalf of A all sums which A *shall become legally obligated to pay as damages*. This carrier will argue that A's legal obligation is to be defined by the judgment, and that judgment should be entered only for the *difference* of the claim between the two parties, or nothing against A. B, who had no liability insurance, would be inclined to agree, since he could then use his fire insurance carrier's subrogation claim to reduce A's potential judgment against him from $60,000 to $10,000. The fire carriers, seeking subrogation, would doubtless take a different view.

C.R. 13 makes a counterclaim mandatory if a defendant's injury arises out of the same transaction which is the subject matter of the opposing party's claim. There seems to be no prohibition of judgments being entered both ways. RCW 4.56.060 requires that a judgment be diminished by the amount of a *setoff*, but *setoff*, as the term is used in that statute, appears to be limited to contractual claims. RCW 4.32.110.

Set off practice under Canada's pure comparative negligence statutes varies from province to province and from case to case. The most comprehensive analysis of apportionment problems under pure comparative negligence assumes set off. Gregory, *Legislative Loss Distribution in Negligence Cases* (U. of Chicago Press, 1936), pp. 88-90.

In *Hoffman v. Jones*, 280 So.2d 431 at 439 (Fla., 1973), the Florida Supreme Court made judicial history by adopting pure comparative negligence without waiting for action by the Legislature saying:

> "In the usual situation where the negligence of the plaintiff is at issue, as well as that of the defendant, there will undoubtedly be a counterclaim filed. The cross-plaintiff (just as plaintiff in the main suit) guilty of some degree of negligence would be entitled to a verdict awarding him such damages as in the jury's judgment were proportionate with his negligence and the negligence of cross-defendant. This could result in two verdicts—one for plaintiff and one for cross-plaintiff. In such event the Court should enter one judgment in favor of the party receiving the larger verdict, the amount of which should be the difference between the two verdicts. This is in keeping with the long recognized principles of 'set off' in contract litigation.

The practice in Mississippi has been to enter judgment only for the difference between counterclaims under their comparative negligence statute. *Richmond v. Van's Moving & Storage Co.*, Miss., 197 So.2d 235 (1967). The Mississippi statute relating to counterclaims, however, more clearly requires this result.

The Rhode Island Legislature, in their 1971 statute, solved the problem by adding a section which reads: "There shall be no set-off of damages between the respective parties."

Answers to the questions surrounding counterclaims under our comparative negligence statute will be provided by Mr. James D. McCutcheon, Jr. of Seattle as part of a Continuing Legal Education seminar which will be held in Spokane on March 15th, Seattle on March 23rd, and Olympia on March 30th. The panel is under the chairmanship of Lee Campbell of Seattle.

HMcG

Around the State

CHELAN REPORT

By **James Blinn, Jr.**

The Chelan County Bar Association held its annual Christmas Party on December 19, 1973.

BENTON-FRANKLIN REPORT

By **NEAL J. SHULMAN**

The December meeting of the Benton-Franklin Bar Association was held at the Hanford House in Richland. Guests included a representative from the Benton-Franklin Mental Health and Family Counseling Center who spoke on the availability of services offered to the public.

Congratulations to Pasco attorney **John Schultz** for his outstanding job in putting together the 1973 Bar Association Christmas Party. This year's party was held at the Hanford House in Richland and proved to be an unequaled success.

Welcome back to **John Crawford** who spent the Christmas holidays visiting in Montana. Gas or no gas, skiers **Dick Bennett** and **Mike Pickett** are frequent and routine visitors to the nearby ski slopes.

Among the more infamous New Years' Resolutions in the Tri-Cities area are the following:

Diehl Rettig—Resolved to give up dating

Don Stancik—Resolved to give up drinking

Neal Shulman—Resolved to give up smoking

Judge Daryl Jonson—Resolved to begin court at 7:30 A.M.

Gene Schuster—Resolved to get a haircut

Mike Johnston—Resolved not to make any resolutions

EAST KING REPORT

By **Barbara E. Reardon**

The January meeting of the East King County Bar will be held at noon at the Thunderbird Restaurant in Bellevue, on the 21st.

Lawson & Dailey have moved their offices to 8460 164th Avenue N.E., Redmond. **Charles Diesen** has opened his offices for the practice of law as a sole practitioner at 16275 N.E. 85th, Redmond.

James Dailey, as the Association's newly elected President, will assume his duties at the January meeting with **Frank Cushman** of Issaquah as Vice President.

Peter Lucas, Chairman of the Indigent Defense Committee of the East King County Bar Association, advises us that his committee (**Les Walstrom** and **Larry Shaw**, Eastside attorneys) is presently engaged as a liaison committee to the King County office of Public Defense, to review proposals made for the provision of legal services for indigent defense under the Arger-Singer Rule in Eastside communities.

Lee Kraft, Bellevue City Attorney, announces that **Richard Gidley** has been appointed as Assistant City Attorney and **Leo Poort** as Staff Attorney, with the City of Bellevue.

KITSAP REPORT

By **WM. J. KAMPS**

Kitsap Superior Court Judge **Oluf Johnsen** began the new year with a two-week vacation in Hawaii. Superior Judge **Robert J. Bryan** (presiding in Judge Johnsen's absence) announced that the civil calendar is current and that all cases noted for trial setting will be heard within 120 days.

Myron H. Freyd spent the Christmas holidays in Hawaii with wife Jane and son Alan. These exotic vacations are a good motivation for us junior attorneys to keep working Saturdays.

Kitsap Prosecutor **John C. Merkel** announced that **Richard L. Peterson** (Willamette '73) has joined his staff as a deputy effective January 1. Dick and his wife, Linda, are living in Port Orchard.

Kitsap's public defender, **James Munro**, announced that **Ronald Ness** has closed his office in Port Orchard and joined the public defender's office in Bremerton. For those keeping score, these recent additions show the prosecutor leading the public defender 9-3.

Last month **Gary H. Sexton**, of Walgren & Sexton, Inc., P.S., spent a week at Big Mountain Ski Resort. He and wife, Cathy, attended a seminar on land use planning. **Gordon L. Walgren**, same firm, announced that **Terry K. McCluskey** has become a shareholder in the firm effective January 1.

Bishop & Cunningham of Bremerton have admitted **Leonard W. Costello** to the firm and will do business henceforth as

Bishop, Cunningham & Costello, Inc. P.S.

Your reporter was pleased to abandon his associate status with **Frank Shiers, Len Kruse & Jim Roper** and become a partner in the firm of **Shiers, Kruse, Roper & Kamps** of Port Orchard. That calls for a free round of refreshments at the next bar (county) meeting.

SEATTLE-KING REPORT

By **GERALD G. TUTTLE**

James C. Young announces the association of **Richard T. Cole** for the general practice of law in Seattle. Rick is the son of Judge **W. R. Cole** of Ellensburg.

Steven V. Lundgren has become a partner of Karr, Tuttle, Koch, Campbell, Mawer & Morrow.

YAKIMA REPORT

By **RANDY MARQUIS**

New County Positions Filled:

The apparent endorsement of **Jeffrey Sullivan** by the Yakima County Bar was ignored by the County Commissioners. **Jon Harlan** was sworn in as Yakima County Prosecuting Attorney effective midnight, December 15, 1973. Jon is the former chief civil deputy prosecutor of Yakima County.

Harlan announces the acquisition of a new deputy as of January 2, 1974. **James E. Davis**, a graduate of the University of Idaho Law School June 1973, was born in Snohomish, Washington, and raised in Yakima. He is the son of Hugh Davis of KNDO T.V.

Michael Schwab, Yakima County Community Action Program Director, was recently appointed administrator of the county's new public defender system. Mike will office with the Law Firm of Porter and Hopkins at 307 North Third Street, Yakima, and will supervise seven private attorneys contracted by the county to defend indigents. We are advised that the newly approved budget for the said program is in the sum of $102,000.

Notes on Christmas Function:

Yakima County Bar President **J. W. (Bill) McArdle** has written to **David Crossland**, promotor and general chairman of the 1973 Christmas Bar Banquet and extended his appreciation for a job well done. The attendance was the largest ever. The traditional skit, a loose take-off on the Johnny Carson Show starring **Ross Rakow** as master entertainer and host, Johnny Arson, was well received; and the prices were at an all time high. I might add that not a single party goer fell into the clutches of the law enforcement authorities as a result of the misuse of alcohol or other misconduct.

SKAGIT REPORT

By **DAVID A. WELTS**

Being a very homey bunch up here, the annual Winter exodus draws attention and just to prove that everyone knows what everyone else is doing:

Hawaii was graced by **Gil Mullen, Paul Luvera, Bill Stiles** and **George McIntosh.** Actually, Stiles hasn't gone yet, but we know he will.

Arizona and no sea sickness by **Dave Welts** and **Chuck Twede.**

Sun Valley by **Bud Gilbert.**

California by **Bill Wells**—(duty called, it was grandchild number one).

Ken St. Clair's annual Christmas party was everything it's ever been, which is why only now do I dare think about it.

Boynton Kamb resigned as Mount Vernon City Attorney, and Jack Cunningham accepted appointment to the post.

Had an inquiry from **Ed Huneke** about when our meetings are held and what are we doing. Something about expanding publicity around the State, photos, foreigners at our meetings, etc. I think we're in trouble!

There's a new partnership in Mount Vernon between **Reuben Youngquist** and Colonel **F. Betz.** Congratulations, guys. (Honest, that's the true name.)

T. Reinhard G. Wolff (ditto on the name) gave a great open house at his LaConner Office.

Dick Schacht, that avid seminar-goer and oh-so-thorough probate practitioner, was the program at our January meeting. The subject was use of forms. So, what does he come up with? An expensive, brilliant orange stand-up notebook filled with probate stuff from Utah (!) to be used by a pretty legal assistant. So, that's how you dress up an otherwise dull (Didn't say "dead") subject.

Paul Luvera holds two Presidencies, this Association (with no meetings to his credit yet) and the Washington State Trial Lawyers Association. And I know you don't think it's a big deal that he went to Hawaii, but he took his wife and all eight kids with him. Now it's a big deal.

In case anyone cares, steelheading on the Skagit sure is lousey this year—at least from a boat.

THURSTON-MASON REPORT

By **STEPHEN J. BEAN**

Stephen J. Bean and **Fred D. Gentry** recently announced that **Ward J. Rathbone** had become a partner of the firm of Bean & Gentry effective January 1, 1974. The name of the firm is now Bean, Gentry & Rathbone.

YOUNG LAWYERS REPORT

By **FRED NOLAND**

Frederick L. Noland of Seattle has been elected chairperson of the Washington State Bar Association's Young Lawyers Section.

Noland, of the law firm of MacDonald, Hoague & Bayless, was selected by the section's Board of Trustees, whose members recently were elected by section members in statewide balloting.

Chosen chairperson-elect was **Edward F. Shea** of Pasco. **J. Kevin Downes** of Bellingham is secretary-treasurer.

Members of the Board of Trustees also include **Hugh Ellis**, Tacoma; **John Lindsay**, Spokane; **David A. Thorner**, Yakima; **H. John Hall**, Chehalis, and **Lawrence B. Bailey, Robert L. Burnham, Gregory R. Dallaire, Susan F. French** and **William H. Neukom**, all Seattle.

The Young Lawyers Section is one of a dozen new sections established by the State Bar's Board of Governors. Other chairpersons have been announced.

Report of Travel Committee for 1974

The bewildering and uncertain turn of events in the year past has discouraged the Travel Committee from going forward with its 1974 autumn charter flight to London. In particular we have noted 1) the jet fuel shortage and the resulting uncertainties of costs and charter contracts; 2) the expanding costs of land travel in Europe—devaluation; 3) the siphoning off of the travel dollars of our members by the scheduled ABA Convention in Honolulu and our own get-together about a month later in San Francisco.

Doubtless the list of reasons (or excuses if you prefer) could be expanded; nevertheless they are sufficiently compelling to give your Travel Committee all the symptoms of Bang's Disease.

We do intend, however, to have a charter to London in the autumn of 1975, and an announcement as to time, place, and cost will be published in these very pages at a time when the dust has somewhat settled. We are not about to cancel out our traditional charter program because of the exigencies of the moment.

Submitted with regrets,
The Travel Committee
John D. McLauchlan, Chairman

LAWYER PLACEMENT SERVICE

By **DAVID L. BROOM**, *Spokane*

The Young Lawyer's Committee of the Washington State Bar Association operates a Lawyer Placement Service at the State Bar Office, 505 Madison Avenue, Seattle, Washington 98104, and at the Spokane County Law Library, Paulsen Building, Spokane. The service is available to members of the Association and recent law graduates seeking legal opportunities and employers seeking legal personnel. The service is offered without cost to either the applicant or prospective employers. The following are summaries of a few of the many applicants on file:

1. Established Eastern Washington firm seeking tax attorney (either CPA or LL.M).
2. Western Washington county commissioners seeking part-time legal counsel at $10,000---$15,000 per year.
3. Large Western Washington city seeking assistant corporation counsel for full range of municipal law practice. One year experience required.
4. Two-man neighborhood firm in large city currently interviewing for associate with view to eventual full partnership. Salary open depending upon qualifications and experience.
5. State of Washington has openings both for hearing examiners and for attorneys in the Department of Social and Health Services, Enforcement Division.
6. Large Eastern Washington public utility seeking staff attorney with five years experience for work predominately in contracts and financing. Salary $17,500—$22,000.
7. Eastern Washington 2-county legal services office has two openings for representation of confederated Indian tribes and migratory workers.

EX-OFFENDER EMPLOYMENT RESTRICTIONS: CONTRADICTION TO CORRECTION?

by
Donald J. Horowitz

America is finally waking up to the fact that its alleged correctional systems, also known as prison systems or penal systems, have been a major failure. This has been recognized by everyone from the President of the United States to the Chief Justice to superintendents and wardens to citizens on the street. The evidence is obvious. At least half of the people who go through a correctional system repeat crimes after they are released. According to FBI figures, over 70 percent of the so-called "street crimes," the crimes of violence of which we are all afraid, are committed by people who have been through a correctional system at least once. It seems obvious, therefore, that a change in the system of correction at a fundamental level is necessary to accomplish the primary purpose of a correctional system, which is to correct individuals and consequently protect the public through the reduction of future crime.

Some beginnings have been made and some states and some parts of the federal system are in fact doing more than giving lip service to rehabilitation and correction. They are doing something about it.

Of the many new approaches that must be taken because of the numerous and complex causes of crime, one of those that is essential, and as to which something is being done, is the area of vocational development. This relates directly to a person's psychological, social and economic status. It is a major part of a person's present or future. This is particularly true in America which began with the puritan work ethic and which continues to value that ethic highly. For example, if you asked me "What are you?" I would likely not answer that I am a 5'9½", 165 pound, 37-year-old, brown-haired male. It is far more likely that I would answer "I am a lawyer." The same is true with others. If you were asked you would probably say "I am a personnel director," or a public relations man or whatever your profession, business or job is. But ask a client of the correctional system what he is, and he'll say, "I'm nothing," or "I'm a convict." People most often define themselves by what it is they do for a living or how it is they fill the major part of their time—that is, what their vocation is.

Emphasis on Vocational Training Increasing

As a consequence, there is increasingly an emphasis within the correctional system on vocational training that is relevant to job needs outside in the society. We are not concentrating on license plate making much anymore or even on developing a surplus supply of welders. We have in this state introduced, for example, computer programming courses, business machine repair, hair-styling, draftsmanship, nursing and so on. This is right, and it will be productive of the salvaging of individuals and the protection of the public through the prevention of crime. Each day more people are becoming aware of the fact that vocational and professional skills, good work habits, and meaningful, gainful employment are

necessary ingredients to the rehabilitation of individuals and the prevention of crime.

However, the public is not generally aware of the fact that at the very same time it is approving efforts to develop job skills and employment for offenders and ex-offenders, there exists a major body of legal barriers to meaningful and gainful employment of persons released from correctional systems. Each day correctional systems of this country make promises to the individuals whom it is their responsibility to rehabilitate. These promises take the form of vocational training courses, counseling on work habits and skills, attempts to develop parole plans with job opportunities. Each day in doing those things, the correctional systems of this country also make promises to the public of assuring public protection. And each day, despite those promises and the rising expectations resulting from those promises, because of obsolete, counterproductive laws and statutes, those promises are broken. Each day men and women are released from correctional systems and not given an opportunity to prove that they are indeed rehabilitated.

System Defeats Self

We have thus been involved in a system which defeats itself, in a system where through the work ethic and the values of our society, we applaud hard work and productive activity, while at the same time denying exactly that opportunity to do hard work and productive activity to persons we expect, in fact demand, to act responsibly. We try to rehabilitate, and then place barriers to rehabilitation and in fact initiate an active impetus back to a life of crime.

Thus, in the State of Washington until mid-1973, when remedial legislation finally passed, there existed legal restrictions on the following businesses, jobs and professions: accountancy, barbering, architecture, beauty operators, chiropodists, chiropractors, opticians, funeral directors and embalmers, dentists, pharmacists, sanitarians, for hire operators of motor vehicles, operators of drivers' schools, insurance brokers and agents, lawyers, manufacturers, storers, dealers or purchasers of explosives, engineers, surveyors, optometrists, osteopaths, physicians, physical therapists, licensed practical nurses, psychologists, real estate brokers, registered nurses, veterinarians, nursing home administrators. In addition, if one was convicted of certain kinds of crimes, one was denied the opportunity to obtain a license to operate a motor vehicle. One also cannot be a legal guardian for another person, even one's child, if one has been convicted of a felony. In fact, there was a restriction against issuing a permit to collect wild birds' nests and eggs to persons convicted of felonies, or crimes involving "moral turpitude," whatever that is. Most other states have fairly similar laws.

More than twenty states have legal barriers restricting or excluding from public or government employment persons with criminal records. The continuation of such barriers treats ex-offenders as a class rather than as individuals. It also denies them the opportunity to engage in particular occupations whether or not their crime or actions were relevant to those occupations. It denies them their individual self-worth, and the ability to be judged, not on what they were, but on what they are. It denies any effectiveness at all in our correctional system, because it assumes that a person is just as bad when he comes out as when he went in, and essentially declares that he might as well not have gone into the correctional system at all. It perpetuates the mark of Cain upon an individual who may indeed be totally rehabilitated, and it does so forever, no matter how many years a person may have lived an honest, upright, productive life. It denies the promise society has made that a person can pay his debt to society in full, because even after the debt is paid, there remains this penalty. It denies to society the opportunity of receiving the benefit of the products and services of many worthwhile individuals. And it denies to society the ultimate public protection which society must have, because of the active impetus to a reversion to criminal behavior caused by such artificial and inappropriate barriers.

By continuing such restrictions or by turning our back on ex-offenders or their plight, the public should not be surprised if many of them revert to criminal behavior because of futility or frustration, and if they then turn their backs on society. This is counterproductive to our own expensive, hard-working correctional systems and counter-

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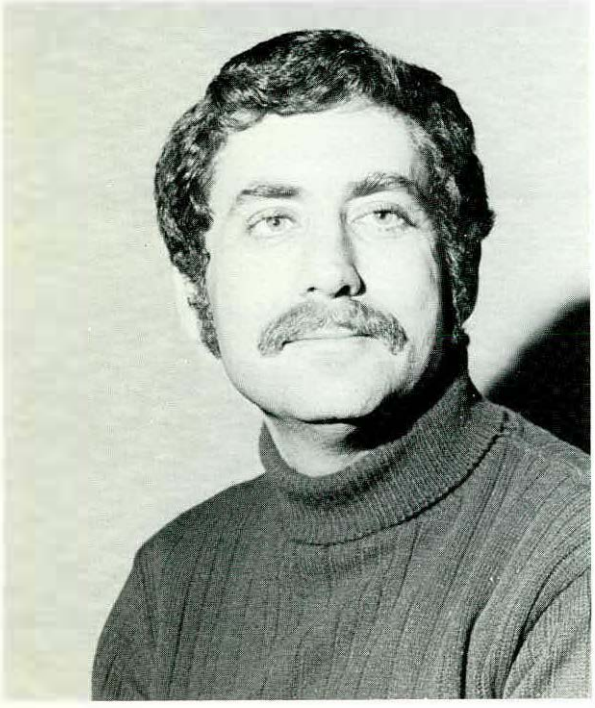
Judge Donald Horowitz, recently appointed to the King County Superior Court, graduated from Yale Law School in 1959. He then clerked for Judge Harry E. Foster of the Washington State Supreme Court for one year before entering private practice in Olympia until 1963. Thereafter Judge Horowitz practiced with Farris, Bangs & Horowitz in Seattle, 1963 to 1969. From 1970 to 1973 he was Sr. Asst. Attorney General with the State Department of Social and Health Services. He currently serves on various national and state commissions on mental health, corrections and mental retardation.

productive to our desire for reduction of crime. It seems that although the public may want an ex-felon to work, most often the public will not give an ex-offender a job.

There are a number of methods available for use to attack this problem. They are not mutually exclusive; each should in fact be used in concert with others.

Repeal Statutory Barriers

The first, of course, is direct repeal of any statutory or regulatory barriers. In Washington State and in other states, Florida and Illinois for example, bills have been drafted which directly do away with statutory or regulatory barriers. It must be recognized that some of the laws and restrictions which presently exist specifically state that a person may not perform an occupation or enter government service because of having been convicted of a felony or of a crime involving moral turpitude. Others are more vague, and provide that an individual may not obtain a job or a license because of "unfitness" or "lack of good moral character." However, the same result applies, and therefore, the new laws to do away with restrictions must address all these phrases and issues. The issue of relevance is, of course, key, also, and no person should be disqualified from a job or license that bears no relation to his fitness or ability to perform the job sought. Corrective statutes must be introduced and actively supported by professional organizations involved such as the psychological associations, the medical associations, the engineering associations and so forth. They should also be supported by the Public Personnel Association because of its particular expertise in the area of fitness and qualification for employment.



Clearly, these statutes should and will be supported by the very excellent project of the American Bar Association called the National Clearinghouse on Offender Employment Restrictions, which is compiling and centralizing information, disseminating that information and providing technical assistance and specific support to all reasonable efforts to do away with these restrictions.

Enact "Expungement" Statutes

A second method of eliminating such restrictions is through so-called "expungement" statutes. These statutes have the effect of requiring criminal records and proceedings to be erased or destroyed, to assume a status as if the conviction never happened in the first place. This can occur when the ex-offender has fulfilled certain conditions over a certain period of time. For example, a recently enacted Kansas statute provides that after five years of good behavior on parole or after release from incarceration, the individual may apply to have the record of that offense expunged. The effect of this is to release the ex-offender from any disabilities or handicaps resulting from that criminal conviction, and he is in fact entitled, after expungement, to answer questions on employment applications by saying that he has not in fact been arrested or convicted of the crime. It is most important in such legislation to assure not only that the theory is sound but that enforcement and implementation are in fact assured.

Prosecutions Deferred

A third method by which employment restrictions can be removed is through an important emerging practice in the criminal justice system. This is by diverting individuals out of the system prior to conviction. Individuals as to whom it is appropriate would have their prosecutions deferred for a period of time, for example, a year, on condition that they undertake a certain individualized contract plan, perhaps to include job training, drug counseling and treatment, and so

forth. If they complete that contract plan successfully, then the prosecution would be dropped, they would have no conviction and they could continue on with their lives. If the contract plan is not met, then the individual could, of course, be prosecuted. This early intervention for appropriate individuals has already been tried on an experimental basis in some states. It has proved effective in lowering the rate of repeat crimes for the individuals involved, and it clearly avoids the problem of employment restrictions for convicted persons, because there is no conviction.

This solution has systemic ramifications and is part of a total movement toward early diversion and community-based corrections for non-dangerous offenders. It has many advantages, not the least of which is the elimination of the problem of employment restrictions. In this state, a statute passed in 1973, effective January 1, 1974, authorizes such diversion in certain circumstances (Chapter 123, Laws of 1973, ex. sess.).

Affirmative Action Programs

A fourth method, of course, and one with which personnel professionals are quite familiar, is affirmative action programs. I don't know very much about the techniques of affirmative action programs because that's not my field, but I do know for certain identifiable classes of individuals. We have seen in the State of Washington how effectively many members of minority groups can be brought into the mainstream of society through affirmative action programs. The same is of course happening with women. I believe that the same should be done for ex-offenders. Frequently, of course, there is some overlap. There are ex-offender women, and there are minority groups who are ex-offenders, and I think that the overlap is fine. We must begin taking such steps, and in the State of Washington we have begun planning such an affirmative action program. In fact, we have already done a little in this area. We have specifically hired into state employment people on work release, and when those individuals have been paroled, they have continued on the payroll. This has not, however, been systematic; it has depended to a great extent upon the particular department or agency head.

You have heard this before and no doubt you will hear it again, but it is true that we are to ask private enterprise to make an effort to employ ex-offenders, then we in public employment must set an example and show our good faith. The benefits are manifold. Not only will we get good workers, but we will reduce crime and all the social and financial cost that crime means. That cost is plenty too, from crowded, congested and expensive court and legal proceedings, to the tremendous cost to the victims, to the fact that we are supporting people in prisons at the rate of about $5,000 per person per year and many of their families on welfare at another few thousand dollars per year, to the continuing cycle of crime from generation to generation. It is clear that the benefits are great—social benefits, economic benefits and moral and conscience benefits.

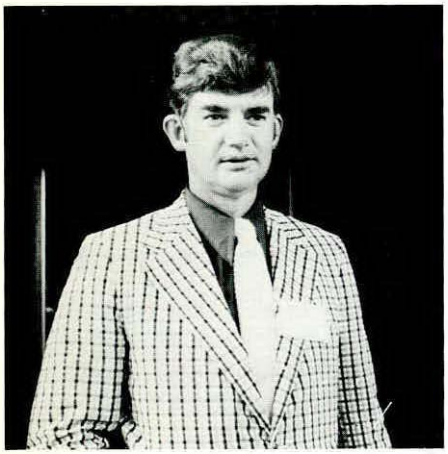
Corrective Legislation Passed

The State of Washington has taken a first major step forward. After an abortive attempt at corrective legislation in 1972, a bill offered by the Department of Social and Health Services and the Attorney General's Office was passed in 1973 with overwhelming bipartisan support. This statute (Chapter 135, Laws of 1973) does away with ex-offender employment restrictions, except where the offense directly relates to the occupation in question, and then only for a limited (ten year) period of time. Society, as well as the individual, will be the beneficiary.

It is time to come out of the dark ages, time for people to be made fully aware of the problems facing ex-offenders and consequently facing society. We must protect both individuals and society, but if we as a nation continue to allow employment restrictions against ex-offenders to remain, not only are our vocational and educational and training programs empty exercises, but they are vicious promises made to be broken. We have been denying to individuals basically no different from ourselves a chance to make it in a way that America has long understood is the best way to make it, and we have been assuring that our correctional system doesn't correct.

□

McLauchlan at Large



Joseph D. Holmes, Jr.

Cameron De Vore, Allan H. Toole

Judges William Lindberg, Horton Smith, Carl Stokes, and David Hunter

Judges Donald Horowitz, Stanley Soderland, Theodore Turner

Edward W. Huneke

The Courts

SUPREME COURT PRACTICE

By **WILLIAM M. LOWRY**
Supreme Court Clerk

Folklore of Certiorari

Plaintiff, damaged by an avalanche, sues the real estate developer and the State. Just prior to trial, the court dismisses the State. Plaintiff petitions for certiorari to obtain a review of the order of dismissal and for a stay of the trial pending determination of the writ. Plaintiff argues certiorari is the appropriate remedy because:

a. An expedited hearing is required to avoid two trials: one against the developer and one against the State involving the same witnesses and testimony.
b. Unless a stay is granted, plaintiff will lose the fruits of an appellate review of the order of dismissal, and there is no provision for a stay during the pendency of an appeal.

Held: Plaintiff is procedurally wrong on both grounds. The order of dismissal is a final appealable order and the appeal can be set as promptly as a writ. The Chief Justice has authority to stay a trial court during pendency of an appeal. In this case the Chief Justice, following a preliminary hearing, considered the petition for writ of certiorari a notice of appeal, ordered the appeal set in the next session, and stayed the trial until determination of the appeal.

That delay, expenses and annoyances incident to the appellate process are not grounds for certiorari was established by opinion many years ago. *State ex rel Miller v. Superior Court,* 40 Wash 555, 82 Pac. 877; *State ex rel Scholosberg v. Superior Court,* 106 Wash. 320, 179 Pac. 865. Why then do counsel frequently urge delay as a grounds for certiorari? RCW 7.16.040 which conditions the granting of the writ on the absence of "any plain, *speedy* and adequate remedy at law" (underlining added) may be the answer. However, as the Court observed in *State ex rel City of West Seattle v. Superior Court*, 36 Wash 566, 79 Pac. 29:

> All litigation is fraught with vexatious delay and incidental expenses, and if this alone were sufficient to justify extraordinary writs of this character, the effective method of appeal would soon grow into disuse.

Additionally the Court itself may have given credence to the concept. In 1963, faced with a backlog of considerable magnitude, Rule on Appeal 57 was amended to grant certiorari as a matter of right to expedite disposition in certain cases the Court considered raised urgent issues, for example child custody. Actually the desired result could have been accomplished without corrupting the theory of the discretionary right of certiorari by providing such appeals would have priority in setting.

Actually after a writ is issued by the Supreme Court, the case is in no different status than an appeal. Both will be set for hearing in the next session of the Court on a date mutually selected by counsel from the available dates upon which argument will be heard.

With respect to a stay, it is true that the appellate rules do not provide procedures for obtaining a stay during the pendency of an appeal. A stay necessary to preserve the fruits of an appellate review is considered to be within the inherent power of the Court. This authority is recognized in CR 62(g) by the following language:

> The provisions in this rule do not limit any power of the supreme court or of a judge thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

The Chief Justice has authority to grant such a stay. Ordinarily a petition for a stay should be noted in accordance with the time provisions of ROA I-57 for hearing by the Chief Justice on a Thursday at 1:30. The Chief Justice will hear a petition for a stay ex parte at any time without notice if the petitioner can show that the merits of the appeal will become moot by complying with the rule. Even if the petition is made ex parte, however, the petitioner must assure the Court that the adverse party has been notified of the presentation.

In determining whether a petition for a stay should be granted, the Court considers:

a. The effect of a stay on the rights of the respondent.
b. The effect of a denial of a stay on the rights of the petitioner.
c. The effect of a stay on the public interest.
d. The likelihood of petitioner prevailing on the merits of the case.

SUPERIOR COURT NEWS

By ROBERT M. ELSTON, *Judge*
King County Superior Court

Because of mandatory age requirements, Judge **Theodore S. Turner** retired December 31, after nearly 25 years on the King County bench. Judge Turner had served since his appointment by then Governor Arthur B. Langlie. **Donald J. Horowitz,** Seattle, has been appointed by Governor Daniel J. Evans to fill the resulting vacancy.

* * *

Judges **B. J. McLean** and **Felix Rea** (Grant) have announced the appointment of attorney **Randolph S. Palmer** as Grant County's first full-time court commissioner. Palmer will hear all juvenile court and mental illness matters as well as various phases of probate and domestic relations cases and will assist District Court Judge James F. Wickwire in traffic matters. He also will sit as a pro tem judge in both Superior and District Courts.

* * *

King County Superior Court judges have elected Judge **Stanley C. Soderland** to a second successive one-year term as Presiding Judge. Judge **Erle W. Horswill** was elected Assistant Presiding Judge, succeeding Judge **Frank D. Howard.**

* * *

Cornelius C. Chavelle has resigned as a King County Superior Court judge, effective January 15, after serving one year of the four-year term to which he was elected in 1972. Chavelle stated that the heavy time demands of his work on the bench did not allow him sufficient time to continue civic and charitable activities. He has returned to private practice in Seattle. Governor Evans will appoint a replacement.

COURT OF APPEALS

By **JOSEPH A. THIBODEAU**

On September 1, 1972, the Washington State Supreme Court amended CAROA 47, Reimbursement of Costs—Indigent Criminal Appeals, to provide as follows:

CAROA 47(d):

"Counsel for defendant shall file his cost bill not later than ten days after the opinion in the case becomes final as provided by CAR 15. Only one cost bill shall be filed by counsel."

When a cost bill has not been filed within the time allowed, such claim will be deemed to have been waived. CAROA 47(e). This rule is being strictly construed so that unless counsel timely files his cost bill, recovery of attorneys' fees and costs will be deemed waived. To avoid what could be considered a harsh result to the members of the bar, the divisions of the Court of Appeals and the Supreme Court have now adopted the practice that when an opinion becomes final, the court will inform defendant's counsel by letter the requirement in the rule that counsel has ten days in which to file a cost bill.

A cost bill filed pursuant to CAROA 47 should not be confused with a cost bill filed pursuant to CAROA 55. CAROA 55 refers to costs which may be recovered by a *prevailing party* in an appeal. In CAROA 47, however, the costs that are recovered are the costs and fees of the defendant's court-appointed counsel for services performed during the course of the appeal. Whether or not the defendant is successful on the appeal is immaterial. Under CAROA 55, only the prevailing party is entitled to recover costs. The cost bill under CAROA 55 must be filed within ten days following the *filing* of the *opinion.* This rule has also been strictly construed that unless counsel files a cost bill within ten days, costs will be deemed to have been waived. CAROA 55(f).

These significant differences of the rules are summarized as follows:

Judge Cornelius C. Chevelle

CAROA 55:

1. The cost bill must be filed by the prevailing party within *ten days* of the filing of the *opinion.*
2. Recoverable items under this rule are: The fee of the clerk of the court of appeals; The fee of the clerk of the superior court for preparing, certifying, and transmitting to the court of appeals the transcript on appeal, or any supplementary transcript, and the statement of facts, including all exhibits; statutory attorney's fees; the actual amount incurred in the printing of the required number of briefs; the actual amount incurred, by the appellant, as stenographer's fees for preparing the statement of facts and one copy; and the actual cost of the premium on an appeal and/or supersedes bond.

CAROA 47:

1. Cost bill filed by court-appointed counsel for defendant ten days after the opinion becomes *final.*
2. Costs which may be recoverable under this rule are: Itemized as to actual hours expended by counsel in preparation of the appeal, the amount claimed therefore, expenses paid by counsel incident to appeal, actual travel expenses of counsel incurred or to be incurred for argument in the Court of Appeals.
3. To determine when an opinion becomes final, CAR 15 provides:

"A decision of a panel shall become the final decision of the court of appeals:

a. Upon stipulation of counsel to a date prior to thirty days after the decision is filed;
b. If counsel do not stipulate to an earlier date, thirty days after the decision is filed unless a petition for rehearing is denied, the opinion will become final twenty days thereafter unless a petition for review or an appeal is pending. An opinion will become final upon denial by the Supreme Court of a petition for review. Amended eff. Jan. 1, 1972.

When an opinion becomes final, it shall be remitted by the clerk to the court from which the case arose."

In Memoriam

Edmund T. Brigham, who practiced in Newport, north of Spokane, 50 years, died November 19. After service in World War I, he attended Gonzaga Law School while teaching at Gonzaga Prep. He practiced briefly in Spokane before going to Newport. At his death he was in a partnership with his son, James F. Brigham.

Joseph A. Barto, 85, former Seattle-King County Bar president and State Bar Board of Governors member, died November 19. A graduate of the University of Washington Law School, he was in partnership with Alfred H. Lundin from 1918 to 1963.

Carl A. Nicholson, 82, for many years trust officer and later vice president of the Spokane and Eastern Bank, died October 28. Before retirement in 1957, he was a director of several companies and active in Spokane fraternal and community activities.

James David McCallum, 87, died October 27 in Seattle. He was born and grew up near Davenport, was graduated from Davenport High School, then was graduated from University of Washington Law School in 1912, returned to Davenport and practiced there 52 years and was a community leader and mayor.

Charles W. Butterfield, 43, with Allen, DeGarmo & Leedy from 1961 to 1967, died December 13 in Los Angeles after a long illness. He more recently had resided in Honolulu, where he was an attorney for Dillingham Corp. He was a graduate of Stanford Law School.

William G. Long, 79, King County Juvenile Court judge for 31 years until retirement in 1964, died January 3. After graduation from University of Montana Law School and Army service in World War I, he came to Seattle in 1919 and was a private practitioner 15 years. After his appointment to the bench he became one of the best-known Juvenile Court leaders in the nation, and received a number of national and local honors.

more court work and time and if a misdemeanor case were to wait its turn, it could conceivably be months before a simple negligent driving case could be heard. The alternative is that if it gets speedy treatment which it is getting now, that's what the people deserve. Justice can be obtained in justice court as well as it can in superior courts.

Significantly, there is no report that justice courts are behind in docketing or trials. In fact, many of them are not working full time. In counterdistinction, some of the superior courts are months behind.

Appeals Procedures Examined

Both proposed judicial articles give parties one right of review, except in civil cases of minor significance. (This is a recognition itself of difference in importance.) The form of review, whether de novo or to which court, is not mentioned in the proposals.

Our present article, Section (6), provides that the superior court shall have appellate jurisdiction in cases arising in courts of limited jurisdiction. This oversight in the proposed articles should make every lawyer and litigant sit up, study and take notice, particularly when coupled with the right of the legislature to determine jurisdiction of all courts. Where will the appeal lie from a collection agency claim or negligent driving case, and in what form?

The real reason that was included is because there is an intensive objection by an articulate few who resent the appellate jurisdiction of the superior court. They wish to abolish the de novo appeal; but then what? What are the possibilities? Some of the reasons given are that a person convicted of a petit shop-lifting charge should not have two appeals, where a person convicted of murder gets only one, or that a person should not be entitled to a jury trial of six in justice court, lose and get a jury trial of 12 in superior court in the hopes of finding one out of 18 people who will find a defendant not guilty. Those who parrot such language seldom, if ever, know of a case where that happened. Inherent in the abolition of this de novo appeal is the resentment of some justices in courts of limited jurisdiction in being reversed in a new trial, and that is simply a fact, even though it is the duty of the superior court judges to do this and such reaction is no different from that of many superior court judges who cannot accept gracefully a reversal. Some even talk for years about it. But personal feelings should not outweigh other considerations, nor will reversals by an appellate body lessen the sting.

In the first place, it isn't much of a problem. A survey of all the cases arising from the courts of limited jurisdiction in the state of Washington revealed that statewide, approximately .07 percent are appealed—less than 1 percent of the thousands of cases. That bespeaks well for the justice received in the lower courts. In Spokane County, of the thousands of cases in one year, only 19 were appealed.

Complaint is made that in a petit offense a person may get two trials. Apparently overlooked is the fact that there is ample precedent in Article 3 of the U.S. Constitution in which, in some cases, the party only gets one trial, that is before the supreme court, whereas in matters of lesser moment, there are trials in a district court with an appeal to the circuit court. In our own system, there are many instances where there are duplicitious hearings, the typical examples being the Department of Labor and Industries, where the claimant has a hearing before an examiner, then a Board of Industrial Insurance Appeals, then a de novo hearing on the record in the superior court with an attendant right of appeal. They're much more frequent in superior court than are any appeals from justice court, and there is no complaint except from the lawyers and judges and jurors who frequently lament the fact that it is on a typed record rather than live witnesses.

Limit Multiple Appeals

At the outset, the simple answer to multiple appeals from justice court is to abolish or limit them, not change the judicial article. Even in criminal cases the U.S. Supreme Court, quoting *Ortwein v. Schwab*, 35 L. Ed.2d 572,

> "This court has long recognized that even in criminal cases, due process does not require a state to provide an appellate system." (Citing many cases, page 576)

I do not favour abolition of an appeal from justice court, but I favour limiting it to one appeal to superior court with a right to petition for a review. The answer to the question of multiple jurors is to eliminate jury trial in justice court. There's no constitutional right to a jury trial there, (*Duncan v. La.* 20 L Ed 2d 491) as there

is no right of a jury or a lawyer in small claims court. No statistics were available, but I found no justice court appeals reported in the last bound volume, 80 Wn. 2d and only three in 5 Wn. App. For all practical purposes, the superior court is the final appeal. The rest are de minimis and could be subject to petition for review. In any event, it's a problem of not much significance, not enough to move the legislature or the electorate. Another answer would be to provide for a jury of six in justice court and a jury of six in the superior court on appeal.

Many Federal District Courts have adopted rules authorizing a six man jury only. (FRD 56 #3, 1-73, pg. 535, et seq.) This could be done as a court rule on all appeals from justice court cases, and I submit it should be done. Most persuasively, the National Advisory Commission on Criminal Justice Standards and Goals, has recommended that most defendants be allowed only one appeal and that juries consist of fewer than 12 but not less than 6 members.

The argument about two trials is really not persuasive and under the present system, a man convicted of a felony in a non-capital case has two appeals, one to the appellate court and one by petition to the supreme court, whereas a man convicted of murder has but one, and that is to the supreme court. It's an argument of sound, but not weight. The criticism of two jury trials on shoplifting and one in murder, is just too flimsy a tissue to support a basic change in our constitution.

In the last legislature was introduced SB 2137 which provides for appeals from municipal court to the court of appeals, bypassing superior court. This is abolition of the de novo appeal and, as previously noted, one which many court revisioners are seeking.

Present De Novo Appeal Procedure is Efficient, Just

If the de novo appeal were abolished, then the appeal must be on the record to the already crowded court of appeals or to the superior court, meaning that a record must be kept in the lower court; a record of the thousands of cases in the eight justice of the peace courts in our county for the only 19 cases appealed. It can be said that if the de novo appeal principle is invalid as to any justice of the peace court it is invalid as to all of them, so there is no rational, consistent basis for stating that appeals should be abolished de novo from district courts but not from other justice of the peace courts.

I will discuss what this will mean (a) as to costs and (b) as to your time. As to recording the proceedings, it would require a reporter or a machine tape for all justice courts, nearly 300 of them.

As to the first, in Spokane County to prepare a record in lower court would mean the hiring of five reporters at $14,000 a year, or $70,000, plus part time court reporters for the three part time justices of the peace, $20,000 or a total of $90,000 in salaries alone. In addition, there would be the cost of typing out the record; if it's a half day case, it would cost approximately $75 to $100, which for the 19 cases would be approximately $2,000. Thus for 19 appeals the cost would be $92,000 to insure the record. Lawyer and judge time would both be substantially increased because the lawyers would have to read the typed record, then there would have to be a settling of it and then proceed on the appeal.

To try 19 jury cases in Spokane Superior Court, assuming that it took one day each to try (which is far less than average on these cases) assuming all wanted 12 jurors (some do, some do not) the maximum administrative expense would be approximately $5,000. If these 19 were all tried, the only added expense to the litigant, as appeals are presently constituted, is the witness expense and their time, and there are usually not more than three or four witnesses, at that.

The alternative is to tape the record. If the record is taped in the lower court, as some people blissfully suggest, let us investigate as to what this would cost. At the present time there is no satisfactory taping machine which will accurately reflect comments of the judges, opposing counsel and witnesses simultaneously, unless it is a six or eight track machine. This would cost, conservatively, from $25,000 to $35,000 per machine. In addition, there would be the purchase and storage of the tapes. For Spokane's eight justice courts this would be, conservatively, $200,000. Operators now charge nearly as much as court reporters because, in effect, that's what they're doing. So there would be an additional $90,000 per year.

The proposed articles are silent as to precisely what the appeal would be, whether de novo on the record, as in Department of Labor and Industries cases, or whether a true appeal, as

presently made to the appellate court. If, in the first instance, it is de novo on the record, then a jury must still be impaneled and so the defendant in a criminal case would still have his two jury trials.

If the record is taped, and the appeal is to the appellate court, then again the tape must be listened to by both counsel and the lower court judge to see if it is accurate (double court time) then it must be heard by the appeals court (triple court time) plus argument. If the appeal is on the record, then there is the expense of typing the record, the appeal brief and presumably the writing of an opinion by the appellate court. If the appeal is successful in a criminal case, then the case must go back for retrial with all this possible added expense.

If a jury is to hear the tapes, then not only must there be a trial in lower court, then the tape listened to and settled by the lawyers and the lower court judge, but it must be heard by the appellate court judge in the absence of the jury to rule on objections and to correct errors, and then must be heard again by the judge while it is listened to by the jury—four court times. Presumably the attorneys for the parties would listen to the tape with the judge, and then also listen to it with the jury so that objections could be made. In a criminal case, they would have to be present.

In addition to the expenses enumerated above, under *Mayer v. Chicago*, 30 L Ed 2d 372, if a record is made in the lower court, every defendant must be given a free transcript of it. One can imagine the added cost and the tremendous bargaining power—in other words, a $50 fine might easily require a $50 transcript. This results in a distortion of justice when results are achieved because of expense.

Full consideration of the recent case, *Iverson v. Marine Bancorporation*, Dec. 20, 1973, Washington State Supreme Court, positively mandates retention of de novo appeals in order to avoid expenses of appeals by all indigents in civil cases.

There are other problems concerning tape recordings besides the cost of maintaining them; will every lawyer have to buy a listening device for his office so he can listen to the tapes? Will duplicates be made? A New York Times article, January 7, 1972, carried the report of an experiment between court reporters and tape recorders—the humans won. Caveat *Loveless v. Yantes*, 82 Wn. 2d 763, where in hearings before a planning commission, the tapes were too unclear to permit a complete, accurate reproduction.

As to the expense to litigants, in a civil case where the amount in controversy is $100 or $200, if a debtor lost in the lower court he simply could not afford the appeal. He couldn't afford the attorney fees, even if he was compensated for the transcription. Thus he would lose the benefits of the litigation. The more affluent litigant in lower court could appeal on all cases and place the impecunious litigant in an untenable position by the sheer weight of the attorney fees, briefs, etc. Under the present system, each may get a quick appeal without this expense by merely paying the filing fee and witness fees, and usually the witnesses are close friends or acquaintances. As to those who may object to a de novo appeal because the witnesses must appear and testify twice, there is nothing unusual in a court proceeding for a witness to be examined more than once. It can happen in a preliminary hearing in a felony case, it happens before a grand jury, depositions are routinely taken in civil cases, witnesses testify in coroner's inquests.

If there is error in the lower court in that admissible evidence was excluded, then the case must go back to the lower court for a new trial at additional expense. It cannot be tried on the record in the appeals court.

Compare this to the present system where the evidence can be heard anew and errors of the lower court on admissibility of evidence are corrected automatically, and the matter is disposed of in all but a minimum of cases. Justice court appeals should stop at the superior court level, and if there is any reason for a review from superior court it could be on a petition for a writ with discretionary power to act in the higher appellate court.

At present our new trial de novo is inexpensive to litigants, inexpensive to lawyers and to the taxpayers. It is less time consuming than other types of appeals would be and achieves justice. Any other system would magnify all of the evils and would place an additional burden on those litigants who must pay their own costs. It would considerably enhance the frivolous appeals of indigents in criminal cases who would get a free transcript just for a plea bargaining position. The superior courts have had some experience with the indigent appeal. Minimum attorney fees for preparing an appeal, briefs, etc., vary from $500 to $1,000. Is this justice for a negligent driving charge?

There's a tendency to suggest that our courts are inadequate. A comparison of the courts in the state of Washington reveals that they compare favourably with the rest of the nation and in some respects are better than others on the national level. Some people are persuaded by these out of state speakers who have these canned speeches which apply to every state, every situation, in their own minds, and they'll not be satisfied unless there is a judicial article enacted along their views. There is no reason to proceed on the assumption that Washington's courts are inadequate without investigating the facts.

As previously noted, we presently have qualified court commissioners now appointed by superior court judges who handle a number of court functions and this has worked extremely well throughout the state of Washington. Little, if any, complaint is ever heard about court commissioners. Their use could be increased, but this would involve an elimination in the present article of the provision which limits the appointments of court commissioners to three. In addition, we should revise the present article so as to extend their jurisdiction to hear all civil and criminal matters presently heard by a court of limited jurisdiction. That is probably the best solution to the many unsupervised justices of courts of limited jurisdiction, and has worked elsewhere.

Possibly the taxpayers should have the right to be informed and heard as to whether or not their money should be spent in making courts of limited jurisdiction courts of record. The people of the state of Washington are capable of determining what, if any, revision should be made of their judicial article, drawing on the experience and expertise of others.

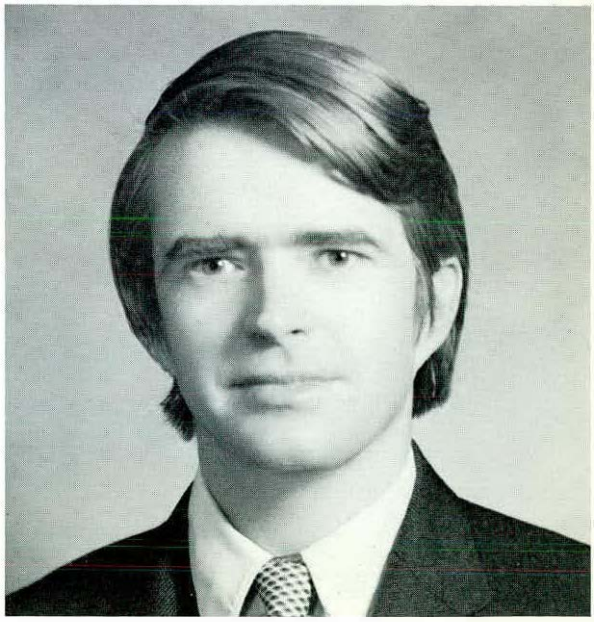
In summary, dissatisfaction with one aspect, such as the method of selecting, retaining or disciplining judges shouldn't require total revision. It can be added. Only legislative action is necessary for needful judicial redistricting; since all judges are paid the same, they should all do the same amount of work, to be administered on the local level.

The problem of unsupervised justices of the peace, of which there are several hundred in this state, can be accommodated by legislation (Art. 4, § 10); the present limitation in the constitution (§23) limiting court commissioners to 3 in each county could simply be abolished and they should be empowered to handle all matters of limited court jurisdiction. De novo appeal must be retained, with only one right of appeal, that is to the superior court and a right to petition for review to a higher appellate court. In this way, any objections to the present system can be economically and effectively met. □

State Lawyer Named

Roger M. Leed has been appointed by ABA President Chesterfield Smith to an Ad Hoc Committee On Consumer Class Actions. The Committee is charged with coordinating the views of the various ABA Sections, and presenting a report to the ABA House of Delegates. Any Washington attorney who has a point of view on this subject is invited to write or call Roger Leed, 540 Central Building, Seattle, MA 2-8506.

The Committee Chairman is George R. Richter, Jr. of Los Angeles, California. Other committee members are Donald J. Farage of Philadelphia; Professor Ira Michael Heyman of the University of California at Berkeley; Don M. Jackson of Kansas City; Beverly C. Moore, Jr. of Corporate Accountability Research Group, Washington, D.C.; and Theodore R. Tetzlaff of Chicago.



Notices

Wanted and Unwanted

Wanted: ALR 29 to end ALR 3rd, ALR 1st series 80, 82 to 100 inc., Vol. 1 Hillyer's Pl. & Pract., 148 Wash. Reports; **For sale:** 1-32 ALR 2nd; Irving Koths, Morton, Wa. 98356, Ph. 496-5133.

Office Sharing Opportunity: Fully equipped and furnished office, 9′ × 13′, including air conditioner, IBM electric typewriter, dictating equipment, desk, with south exposure facing Mount Rainier. Share use of large reception area, excellent library, copy machine, office supplies, full secretarial services, and telephone. $795 per month. Call 622-2418.

For Sale: Wn. Dig; RCWA; Wn. Prac.; Modern Legal Forms; Wn. Rep. Pac. Ed. 290-479. Robert A. Wacker, Seattle. 682-6644.

For Sale: Entire library; take over two-year equity for small down payment and assumption of contract to run approximately 2½ years. Adrian J. Voermans, Spokane, (509) 327-5507.

Space Available: "Law firm in Sea-First Bldg. has office space available for one or two lawyers. Separate entranceway available if desired. Jim Uhlir, 2810 Sea-First Bldg., 624-2460"

For Sale: Revised Code of Wash. Ann. (Book Publishing Co.) with annotations; make offer; Seattle TA 4-5000, Mr. Higgins.

For Sale: Am Jur.2d, A.L.R. 2d, A.L.R.3d Stenocord dictation equipment and Adler (21d) electric typewriter. J. Hartly Newsum. Call (206) 641-2600.

Calendar

Feb. 15-16	ATLA Seminar. Basic Trial Advocacy—Products Liability. Seattle. Hyatt House.
Feb. 23	SKCBA—Review of Current Developments, Fed. Rules of Evidence, Credit Discrimination, L & T Act, Domestic Relations. U of W HUB Auditorium, 8:30 a.m.
March 15	CLE Seminar, Personal Injury Practice Under the Comparative Negligence Act, sponsored by the State Bar CLE Committee and Trial Practice Section, Ridpath Hotel, Spokane, 1 to 6 p.m.
March 16	SKCBA—Federal Agency Practice. U of W HUB Auditorium, 8:30 a.m.
March 23	CLE Seminar, Personal Injury Practice Under the Comparative Negligence Act, Olympic Hotel, Seattle, 9 a.m. to 4 p.m.
March 23	WSTLA Seminar, Divorce vs. Dissolution, Chinook Hotel, Yakima
March 30	CLE Seminar, Personal Injury Practice Under the Comparative Negligence Act, Greenwood Inn, Olympia, 9 a.m. to 4 p.m.
April 13	SKCBA Securities Regulations. U of W HUB Auditorium, 8:30 a.m.
April 19	CLE Seminar, on the new bankruptcy rules, for the general practitioner, sponsored by the CLE Committee and the Section of Creditor-Debtor Rights, Davenport Hotel, Spokane, 1 to 6 p.m.
April 26-28	WSTLA Seminar, Medical and Professional Malpractice, Rosario Resort, Orcas Island, Washington.
May 3	Seminar on the new bankruptcy rules, for the general practitioner, Olympic Hotel, Seattle, 1 to 6 p.m.
May 17	CLE Seminar, on developments and problems of the new Dissolution of Marriage Act and allied topics, sponsored by the CLE Committee and the Family Law Section, Olympic Hotel, Seattle, 9 a.m. to 4 p.m.
May 31	Seminar, on developments and problems of the new Dissolution of Marriage Act and allied topics, Ridpath Hotel, Spokane, 1 to 6 p.m.

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