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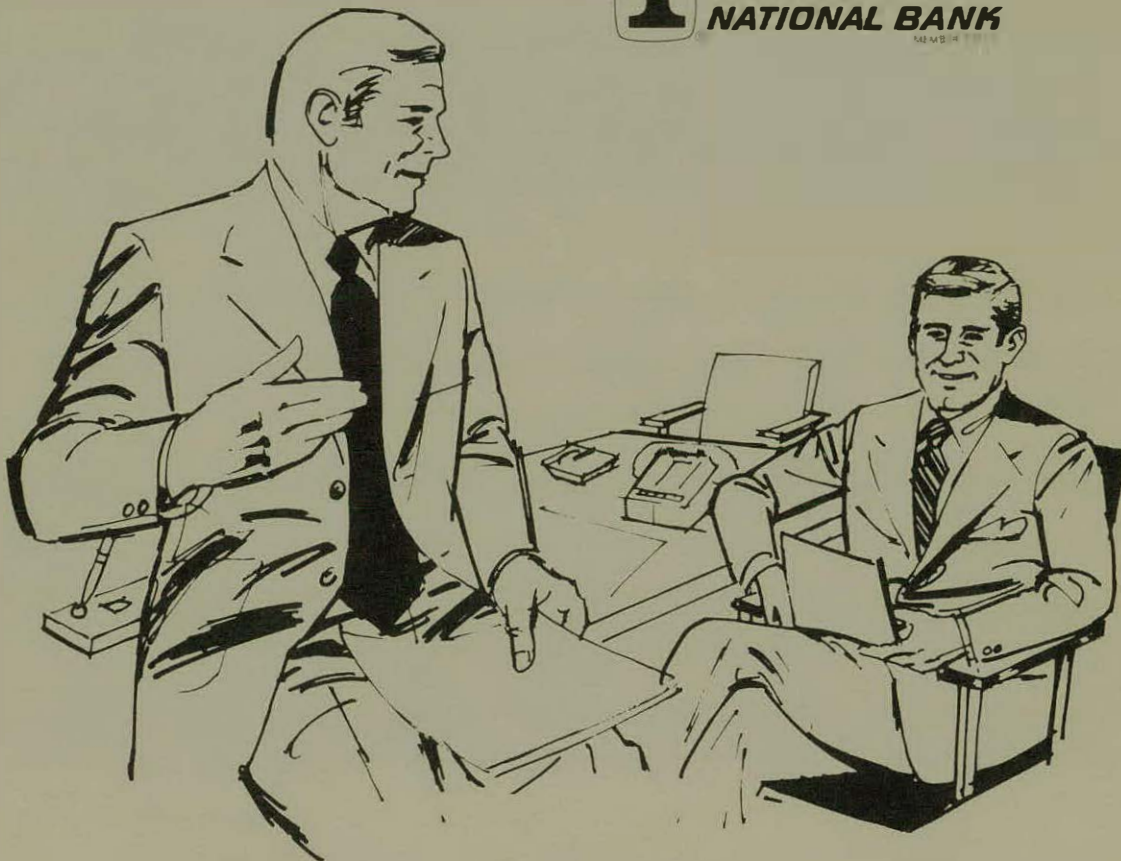
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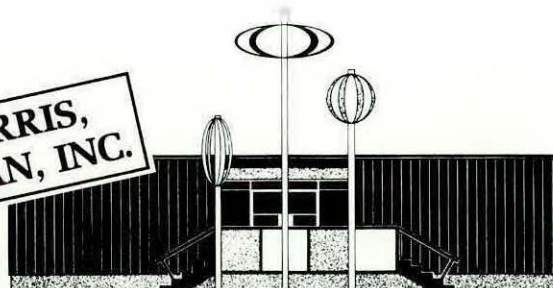
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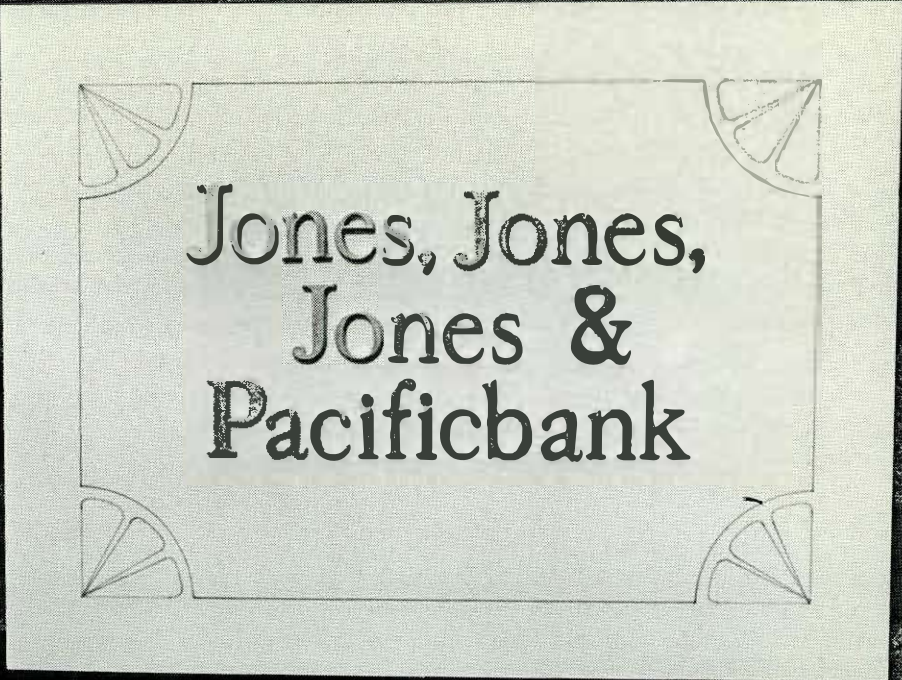
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Edward W. Huneke, *Editor*
Keith L. Kessler, *Associate Editor*

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Travel

Editor:

As a member of the Travel Committee of the State Bar, I would like to express to the members of the Bar Association my whole-hearted support of the proposed trips we are promoting.

At the present time our next trip is going to be on January 6, 1976, to Sydney, Australia. This is going to be a bargain at \$899.00. There is an option trip where you can go to Tahiti, Auckland, Sydney, Fiji and Honolulu for \$1,499.00. These prices would include your hotel and some meals.

We have been advised by Pan Am that the regular air fare from Seattle to Australia and return is \$1,526.00 so you can see what a bargain it is.

My wife and I had the opportunity of going on the last sponsored trip to London where we had a marvelous time. With inflation becoming rampant in all of the countries, I would like to express at this time that if you are going to travel, you better do it now. I am hoping therefore that we will have a very good response to our proposed trips.

E. F. VELIKANJE

Yakima

Client Security Fund

Editor:

I received, read, re-read and answered our President's eight page salvo on the subject of the Clients' Security Fund. Fearing that when our Association puts out an eight hundred forty pound mailing to its members, it por-

tends things my Rulers are preparing to do to me, I got from Eddie Friar a financial summary of the fund from its inception, from which I conclude: (a) Collectively we are a pretty good bunch of fellows after all; (b) The responsibility for any weakness in the Fund's structure must be placed squarely on the backs of those of our Governors who since 1965 — for ten years — have treated the fund like a step-child.

The concept of the Clients' Security Fund was adopted fifteen years ago. I was on the Board of Governors during the first three years of operation. It was the first in the country. It was watched carefully. We were committed to the notion that we would make an annual allocation of \$5 per lawyer to the fund. This was done at the rate of \$16,000 per year for the first four years.

Then something happened. The Board began to relax — \$2,200 in 1965. Nothing — zero — in each of the next four years, despite the fact that the membership was rising towards our present 6,000 level. With a \$41,000 allocation in 1970 the year closed with a \$99,000 surplus. For the next five years, ending in September of 1975, it was strictly hit or miss — not a penny in three of the five years, and an average contribution of about \$14,000 per year, or about \$2.50 per head.

To compound the case, just about five years ago the scope of coverage was broadened and limits were increased from \$5,000 to \$25,000. It is hard for

me to understand with a doubling of membership, expanded coverage, and a five fold increase in limits contributions were cut in half.

Despite all this the story has a happy ending. From beginning to date of our President's letter our deposits over the 15 year span were \$179,000. There is in the fund almost exactly \$100,000 after allowing for *all* claims whether paid, or approved for payment. Our net loss over the term, after allowing for claims expense and interest received, has been considerably less than \$6,000 per year — just about \$1 per lawyer. Can you name any other group which can enjoy a claim experience such as this? To really bring things home price a \$25,000 bond for an executor.

I told Mr. Day that I did not share his skepticism of the character of lawyers — that with such an amazingly low loss experience I thought we had made a pretty good case on the proposition that we don't need "spot audits;" that with losses averaging less than \$6,000 per year I have difficulty in justifying \$25,000 per year to hire a "spot auditor" to try to uncover \$6,000 worth of sins; that I thought we should simply resume what we started out to do — allocate \$5 annually to the fund sweetened by the "spot auditor's" salary, thereby creating a massive security fund and giving us a modicum of peace and privacy. Anybody agree?

THOMAS MALOTT

Spokane

Stop Specialization

Editor:

After due consideration, I desire to respectfully protest the efforts of some members of the State Bar Association to become designated as "Specialists" in the fields of general law practice.

In the first place, the public will sooner or later look upon such a policy as a potential "Rip Off" on our clients. They will certainly assume that a "Specialist" in Probate Law will be entitled to charge more than a non-specialist. The same potential inference relates to every type of law practice, except probably, Tax Law or Trademark and Patent Law. A young lawyer would have to wait ten or more years before he

could hope to qualify as a "Specialist" — a word implying super-expertise growing out of experience.

Secondly, most lawyers in our State are engaged in general practice. If they become designated as "Specialist" in any particular field, the public may assume they do not accept legal work outside of their announced specialty.

Thirdly, to announce a certification as "Specialist" is a form of advertising distasteful to most lawyers, in my opinion.

Finally, I fear the large big city law firms will through advertisements of their multitude of "Specialists" in every field of law, unfairly compete with the small law firms and sole practitioners engaged in general practice.

A firm practicing with ten

"Specialists" in ten different legal areas and ten "associates" without the badges of "Specialist," would amount to *reductio ad absurdum*.

What do our Colleagues think about the Belli's and the Kunstlers as "Specialists?"

CAMERON SHERWOOD
Walla Walla

Eastern Washington Forgotten

Editor:

I would like to address myself to the fact that we are headed towards compulsory hours of Continuing Legal Education as a condition of maintaining our right to practice.

First of all, one of the best all-day Seminars that I have attended was right here in Spokane and was put on jointly

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by the Spokane County Bar Association and Gonzaga University Law School. It was an all-day session addressed to the New Federal Rules and the panelists included two of our Eastern Washington Federal Judges, our most knowledgeable Superior Court Judge regarding evidence, etc., and Professor Nappi, a prior practitioner and current professor in this area at Gonzaga, who was the coordinator of the program. I submit for your consideration that these types of programs be considered as qualified for the educational requirements that you have in mind.

Sometime before then there was a Seminar put on at Gonzaga Law School by the State Attorney General's office and half a day was devoted by their experts towards an indoctrination of and an explanation of the Consumer Protection Act. I likewise submit for your consideration that these types of educational programs be considered.

The most obvious thing to us Spokane and Eastern Washington attorneys is that these local programs do not require transportation and are of minimal expense.

For some reason the ruling authorities of the Washington State Bar Association have assumed that all practicing attorneys within the State of Washington have the ability to travel to the Coast and stay at expensive hotels for educational or convention purposes. This is a totally unrealistic and absurd position.

For us attorneys in Eastern Washington that have not developed large business clientele

or for those that are new to the business and on a low pay scale in a law firm or are struggling to make it on their own, it is extremely difficult in many, and most cases financially impossible, for us to attend one-shot Coast Seminars and the continual conventions that are held on the Coast. *You* are thereby precluding us from obtaining the value of many important Seminars and *our right* to participate in the affairs of the Washington State Bar Association.

For example, my wife and I attended the recent Seminar on a Lawyer's Life that was held in Harrison Hot Springs, British Columbia. We felt it was one of the most significant Seminars that the Bar Association has ever offered; however, from Spokane, Washington, it was a long one-day travel requirement each way and when combining the costs of the Seminar, staying in a 50-year old, run-down hotel with a minimum daily rate of \$30 plus the costs of meals and transportation and lastly the consideration of being out of the office for several days and not generating any fees thereby, we wound up on our return looking at a several hundred dollar bill. I see no damn reason why that Seminar could not have been put on in Seattle, Yakima, or Spokane as other Seminars without a limitation as to attendance so that those of us on the forgotten East side of the State could have had a greater participation.

LEE A. LARSON

Spokane



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Seven Year Delay to Receive Retirement Pension

The sole practitioner is being forced into non-existence. Planning for retirement years results in various alternatives *except* continuous sole practice with the average but respectable range of clientele.

Social Security benefits are invested in, as required by law, by most people, including sole practitioners. Every government lawyer, whether city, county, state or federal, and every judge has additional retirement benefits accruing during his or her employment. Attorneys employed by corporations have the same.

Attorneys in large or small law firms not only are organizing formal retirement plans, but also the structure of the firm provides a type of informal, built-in retirement which produces a continuous source of income generated by the reputation and past clients of the older lawyer. The older lawyer will draw the clients to the office, and the younger lawyers can produce a substantial portion of the work.

There are numerous examples of persons reaching age 65 who have several pensions payable to them from military service, government service such as prosecutors, hearing examiners or U.S. attorneys, and who obtain federal court appointments for life.

In sole practice there are some, but not many, who have concentrated on investments through inheritance or a few unusually large fees. In their



post-65 age years, their investments provide a fair income to supplement the small legal fees they may still generate.

The majority of sole practitioners, however, do not enjoy the luxury of such successful investments or the demise of wealthy relatives.

The 65 year old sole practitioner has no young lawyers to support him. He has worked long, hard hours to provide himself with a modest income. As he reaches 65 years, he finds he cannot produce the work that he did twenty years before. Nor can he, nor does he want to stop working altogether. He would like to supplement his income with his Social Security pension.

He has contributed his 8% into the Social Security pension programs, and he suddenly finds that he cannot draw upon those benefits if he earns wages over \$2500 per year, until he reaches age 72.

Not so for the attorney with the fine investments. He is able to draw his social security no matter how many thousands he earns on interest and dividends.

The attorney with the staff of bright young lawyers has his work product supplemented by the work of the bright young lawyers.

The attorney with past government or judicial experience can supplement his income with his earned pensions without limitation on his over-65 earnings.

H.R. 2197 is aimed at removing the strict wage limitation for the 65-72 year olds enabling them to start receiving their Social Security plans.

The wage limitation was included as an attempt to remove persons from the labor market. Statistics will show that forcing persons to retire seems to force them to die.

The sole practitioner who has served his clients well over the years should certainly be encouraged to continue his services as long as the services are useful. He should not be forced to stop earning income over \$2500 per year. He should also be allowed to draw his Social Security benefits the same as his fellow lawyer who is heavily invested.

Urge your Congressman to approve H.R. 2197.

Edward Huneke



Clients Security Fund

I wish to express my thanks and the thanks of the Board of Governors to each of you who took time from your schedules to write to me expressing your opinions on the many and varied problems of the Clients Security Fund.

I read each of your letters and I was very proud of the fact that every letter was thoughtful and well-considered, and no matter whether for or against the Clients Security Fund the reasons stated were cogent and reasonable.

I received more than 500 letters from you, and when it is considered that even on ballot issues response rarely exceeds 50% the more than 10% response on this issue was most remarkable.

The breakdown on the answers received was as follows:

1. Should we have a Clients Security Fund? Yes — 75%; No — 21%; Undecided — 4%.

2. Should there be a per lawyer and/or per client limitation on payments? Yes — 55%; No — 45%.

3. Should there be a statute of limitations on filing of claims? Yes — 83%; No — 17%.

It therefore appears clear from those of you who answered that the Bar overwhelmingly favors the concept of a Clients Security Fund and overwhelmingly favors a time limitation on claims filing.

There was only a small majority favoring a limitation of payments on a per lawyer and per client basis, and most of those responding specifically to this question in dollars favored our present \$25,000.00 per lawyer and \$10,000.00 per client formula, although a good percentage favored only a per client and not a per lawyer limit.

The one almost universal question which was asked was whether the Bar staff was seeking subrogation rights and pursuing remedies against third parties. Let me put your concerns at rest on this issue. It is the policy of the Bar that before any payment is made upon any claim against the Clients Security Fund, the beneficiary (or payee) is required to sign an assignment of all of the beneficiary's rights against the defalcating attorney and any third party, to the extent of the amount of the payment received from the Bar



Association. Thereafter, if Bar counsel believes that it can in any way be fruitful, subrogation against the defalcating attorney or responsible third parties is vigorously pursued. Understandably, of course, in many cases no action is taken because it appears in all good judgment to be clearly futile.

The questions of bonding of attorneys and of reinsurance of the Clients Security Fund, as many of you suggested, will be fully explored by the Board of Governors.

You may be sure that the ultimate Clients Security Fund program (which you have stated you do want) will be the best we can put together at the least possible cost to you.

Robert S. Fay

LIFE AND PRACTICE IN A SMALL TOWN

By Thomas A. and Judith L. Gish

Tom's Comments

I feel compelled to forewarn readers of this article that we did not consult other couples similarly situated to compare viewpoints. Hence, any relationship between our views on the subject topic and the majority or popular view thereon is purely coincidental. When Ed (Huneke) asked us to write this article he proffered that our comments might be interesting because of our background. You see, prior to January 1, 1973, neither of us had lived in a town smaller than Olympia. My prior legal experience included 18 months working in the office of the State of Washington Attorney General (Highways Division) and approximately four years in private practice in the Everett area.

In my pre-move practice, which was drastically different not only because I was a subordinate to varying degrees, I was less motivated to do good work than I am now — call it greed or whatever, but I sincerely believe that the quality of my work product improved substantially and

quickly following my move. The saying goes to the effect that "If you want it done right, give it to a busy man." I believe the idea is sound. The small town practice I assumed gave me the opportunity to face the challenge of a heavy volume and diverse legal problems and I would like to think I met said challenge. Regardless, the important thing is that I achieved and continue to achieve a sense of self satisfaction/accomplishment. Probably because I am impatient, among other things, such was and would be more difficult if not impossible for me playing the role of the subordinate, a term I will not define under the assumption that those to whom the label applies can. Escapement from or avoidance of this role is clearly easier in small town practice.

While not all small town practices are the same, most are sole practitionerships and most, like mine, offer a very general practice. The difference between small town practice, as I have experienced, and urban practice, also as I have experienced it, is not so much in the abstract problems that are presented, which I suppose are

categorically similar, but in the total client environment. The contrasts, while seemingly insignificant, are many. Consider for example that none of my clients wear business suits during office consultations (rarely at trial), that perhaps 50% of my office consultations are unscheduled and that many of my clients are farmers, loggers and other persons who work outdoors. Earlier I alluded to the fact that my practice is very general. I assume most rural sole practitioners in our state are. This necessarily in this day and age means considerable domestic relations work. I also do more than just a minimum of (1) probate work, (2) real estate work, (3) personal injury work, (4) contract drafting work, (5) miscellaneous litigation in District, Superior and Federal Courts, including appellate work when necessary, and (6) municipal corporation work, primarily for the local hospital district and the local port district. If in my haste I have omitted some major areas of general practice I am sure I am subjected to them also.

I have not offered much in the way of a com-



THOMAS A. GISH was graduated from Everett High School in 1959 and received his law degree from Willamette University in 1967. He spent eighteen months as an Assistant Attorney General (Wn. Hwys) in 1968-69 after which he served as a private practitioner in the Everett area for approximately 4 years. He has enjoyed the private practice of law in White Salmon since January 1, 1973.

JUDITH L. GISH was graduated from Everett High School in 1960 and received her B.A. in Education from the University of Washington in 1964. She has long since completed her 5th year and is currently enjoying retirement from teaching after having taught in the Everett School District for six years.

The Gishes and 2.4 of their 4.4 children reside in White Salmon.

parison between rural and urban practice. While I have opined that the clientele is different, other aspects differ as well, including one's interrelationship with other attorneys. In this regard my experience may be atypical. My finding is that the lawyers are not as close as their urban brethren. The obvious primary reasons are geographical distance and to a lesser degree age and interest differential. However, it is possible that the frequent adversarial dealings also contribute. If it does it probably is due not only to appearances, and the corresponding desire to avoid the charge of being too friendly with opposing counsel, but, and many will disagree (as I would have prior to my move), also to the fact that frequent combatants for one reason or another generally do not prefer each other's company.

Thus far I have not answered the unasked questions "Do you regret your move?" or "Would you do it again?" These tough questions cannot be answered without considering the effect of the move on my non-business life. Because Judy has discussed matters pertinent to these questions, I will offer very little. My first comment in this regard would be that I believe the spouse of the small town practitioner, especially if he or she is not employed, faces a greater challenge than the practicing spouse because the latter generally has fewer unscheduled hours to fill. While this is also true in the city, the rural couple and particularly the practitioner's spouse have nowhere near the number of opportunities the urban couple and nonpractitioner spouse have to spend their time pursuing conventional yet stimulating pastimes, which may include such simple activities as conversing with friends having common interests, something the city dweller no doubt takes for granted. This is where remoteness can take its toll. In our situation there is no question that my wife has made what she feels are significant sacrifices in this regard. The same concept applies to me to a lesser degree. Here I am referring to the school system, the entertainment possibilities and the general social climate.

I above stated my belief that there are fewer conventional pastimes available to the rural practitioner and his or her spouse. I believe such is clearly the case although the degree will depend on many factors including the distance to a met-

ropolitan area. Since we are only 70 miles via freeway from Portland the distance factor does not eliminate our access to major department stores, movies and the like, nor did it stop me from obtaining (and retaining, yes, Bill Walton is alive and well) a one-third interest in season tickets to the Portland Trailblazer games. Thus, we do have access to many of the things we previously took for granted, although the distance factor does at times, especially in winter, diminish the lustre of same. Now, however, we almost exclusively do these things together or as a family rather than with others. My point is that we have learned to do nearly everything together and I believe this is healthy. In "Euell Gibbons' talk" I guess you could say that my law practice in White Salmon is my "get-back-to-nature-job." Perhaps I can best explain my overall position and answer the two questions previously posed by borrowing a phrase from former Governor McCall of Oregon who, on the issue of immigration into his state, greeted nonresidents with "YOU ARE WELCOME TO VISIT, BUT DON'T STAY."

Judy's Comments

When Tom and I initially traveled to White Salmon to investigate the area and the available law practice, I do not believe either of us actually thought we would really locate here. We were "city people" all the way — Tom having been born and raised in Everett, and I having lived in no city smaller than Everett since infancy. Yet a driving curiosity, perhaps a sense of adventure ("the pioneer spirit?"), motivated us into action. On its face the town impressed us just about as we had expected it to — fitting the description of the old joke, "If you blink as you go through, you might miss it." We did not seriously entertain the real possibility that we might actually locate here until after the initial interview with the attorney selling his practice. It looked like a good business opportunity to Tom and the office building and facilities were desirable. Because the seller was commencing his duties as the newly elected Superior Court Judge in Klickitat and Skamania Counties very shortly and there was interest from other prospective buyers, we had to enter into some fast decision-making.

Admittedly, I was a bit afraid to make such a drastic change but in weighing considerations I believe the two strongest positives that gave me the right mental attitude to condone the move were:

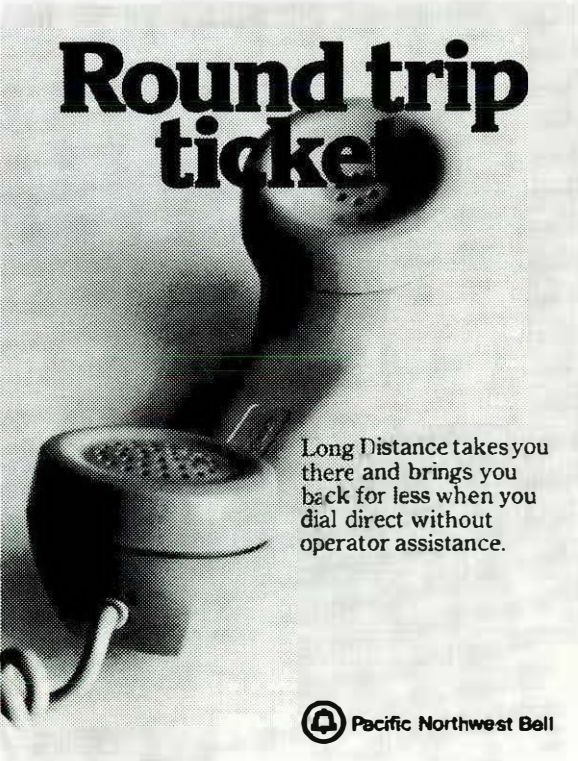
1. I saw it as a challenge for Tom and myself as adults to undertake this on our own and hopefully to make it a success. I believe we both had some underlying feelings about our past value systems and patterns of behavior that we felt could be improved upon. There was a growing inclination within my mind to be convinced that a more rural atmosphere might be conducive to getting our lifestyles and priorities into a healthier perspective.
2. I decided that as an adult I should be mature enough to adjust to the realities involved with such a move, including those I evaluated as negatives (for instance no more "quick" shopping excursions to major department stores, as Portland, the closest metropolitan shopping center, is over an hour away.)

As of this coming January we will have lived in White Salmon for three years. I think Tom is probably correct when he has stated that the overall adjustment has been more difficult for me than for him, essentially because he has been involved with the challenge of his new practice. Besides the change of locale I have also been confronted with a shift of my energies from the teaching profession to the home and family — admittedly a big adjustment no matter where I would happen to be residing. I am finding that there are viable alternatives in the area providing the opportunity for personal involvement and growth. I have tried to be selective in how I spend my time as I have never been content as a "joiner" for the sake of belonging to something (a trap, it seems to me, that is even more difficult to avoid in the metropolitan areas). Currently I am serving on the White Salmon Planning Commission, an experience which is exposing to me the many problems and challenges of the area — trying to keep current with the demands of the times while preserving the charm and uniqueness the area has to offer is not an easy task. Our major projects this year include peripheral zon-

ing and updating the comprehensive plan so as to reflect the need and desires of the people living here. Three younger members of the nine person commission are locally raised, were graduated from state colleges and returned here to live. This is evidence, I believe, that the trend of movement is in a stage of reversal — not so many are flocking to the cities; more educated young people are opting for small town and rural living. Other involvements are the more typical ones such as P.T.A. (which we are just reviving this year) and the Episcopal Church. The Hood River Church which we attend offers a very liberal, open atmosphere — no high pressure, and all that happens seems to evolve from valid motivations — personal searching and commitment to the beliefs of the church. Substitute teaching in White Salmon as well as in Hood River, Oregon (which is directly across the Columbia River via toll bridge) has kept me somewhat involved in the current stream of education.


Socially we are finding the pace much slower than previously but this is agreeable with our desire for changes from our past patterns. There are peers — and the group has grown rapidly since our arrival. Five commercial pilots and their families have settled in the immediate area, most of them operating farms or orchards and commuting to their bases in Seattle, San Francisco and as far away as Denver. We have recently been fortunate enough to secure three young quality doctors here, all of them serving a two year term with the National Health Service Corps. They are seriously considering settling here as they are all avid outdoorsmen, enjoying easy access to Mt. Hood or Mt. Adams for hiking as well as snow and cross-country skiing. A new dentist in the community and his wife are formerly from the Longview area. We are tennis enthusiasts and are anxiously looking forward to our new community park to be completed next summer which will offer four regulation tournament tennis courts. Skiing is our winter fetish, with Mt. Hood Meadows easily accessible, only 35 miles away. Major shopping and recreation outings are usually in Portland which is 70 miles away, an hour's drive on the Oregon I-80 freeway. The Portland airport is also convenient as it is located in the northeast part of the city.

In conclusion, my general appraisal of our pilgrimage is that it has been successful for us. The children are content and have found many activities to channel their abilities and energies. The schools lack the progressive atmosphere and support we would like them to have, but there are some very qualified and dedicated educators as well as concerned parents, so I am optimistic that the situation will improve. Most importantly, I believe we have been experiencing a metamorphosis in the structure and content of our value systems — independently and in duality. Our family life seems to be more and more the core of our efforts and satisfaction. We have found, Tom and I, that we are truly each other's best friend and we are content to be in our exclusive company much of the time. I find I am paying more attention to the beauty of nature and am reminding myself of all I have to be grateful for that so easily could be taken for granted. Regardless of the course our future follows, I am certain this experience has provided us allowance for personal growth, as well as professional growth for Tom, an experience we will never regret. □



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PROTECTION OF THE PUBLIC

A Response by
Christopher T. Bayley

I have great respect for Judge Donald J. Horowitz and welcome this opportunity to respond to his August *Bar News* article. His discussion provides an ideal opportunity to further sharpen the debate on sentencing — something we both believe is desirable.

First, there are some points of agreement:

(1) I concur that judges are conscientiously trying to develop and follow sentencing practices that are just and effective — although they are doing so individually rather than promoting a “common law of sentencing.”

(2) I agree with several of the judge’s specific proposals — in particular the need for a bond issue to build a new generation of prison facilities.

(3) I agree that a goal of sentencing is public protection, but would give a much different answer than he does to Judge Horowitz’s question: “What will be effective to provide public protection consistent with the laws and the constitution?”

I. WHAT IS EFFECTIVE

The thrust of Judge Horowitz’s argument is that the most effective means of protecting the public is to “correct conduct” by rehabilitating the offender. He asserts that unless a person is too dangerous to be at large, the most effective way to change the offender’s behavior is through probation. I take issue with these assumptions.

A. Deterrence and Accountability.

The view that the criminal justice system can best control crime by rehabilitating the offender through probationary treatment is a largely unexamined assumption and one which has caused us to neglect other, equally important methods of crime control. This view disregards what has traditionally been one of the most important goals of the criminal justice system — the *general deterrent effect of criminal sanctions*. Francis Allen warned in 1964 that the rise of the rehabilitative ideal had caused us to restrict our research and thinking:

“Another example of the narrowing of interests that has accompanied the rise of the rehabilitative ideal is the lack of concern with the idea of deterrence — indeed many modern criminologists are hostile toward it. This, again is a most surprising development. It must surely be apparent that the criminal law has a general preventive function to perform in the interests of public order and security of life, limb and possessions. Indeed, there is reason to assert that the influence of the criminal sanctions on the millions who never engage in serious criminality is of greater social importance than the impact on the hundreds of thousands who do.”

A growing body of evidence has recently emerged which consistently suggests that punishment, through the use of certain, but not necessarily severe, sanctions is an effective deterrent to crime.

A philosophy of sentencing which emphasizes individual treatment necessarily deemphasizes equal accountability or just deserts. Defendants receive radically different sentences for the same offense. Not only can this be fundamentally unfair but it precludes any hope we have of effective deterrence. If potential offenders know that punishment is uncertain if not unlikely, how can we expect them to be deterred? As policy makers we must squarely face the dilemma that as we promote individual treatment we threaten the effectiveness of deterrence.

B. Recidivism.

I also quarrel with Judge Horowitz's assumption that probation is more effective than incarceration in reducing recidivism. The notion that prisons are crime schools and that probation is always more effective in reducing recidivism is so widespread that it deserves special attention. Judge Horowitz cites figures showing an 80% success rate for probation and compares it with 50% success for parole. His error is very simple — he has failed to correct for the time factor. He compares a group on probation for six months

with a general figure for parolees — they are not comparable groups. Furthermore, he has greatly exaggerated the prison recidivism figures from DSHS which show a success rate of from 60-70%. In fact, recent studies have shown that there is *no* significant difference in recidivism rates between probation and prison. Robert Martinson reaches this conclusion in his massive survey of studies on recidivism and this is supported by more recent findings. One study conducted in Denver followed the careers of a random sample of 679 felons through a five year period. The authors compared recidivism rates between probation, jail and prison sentences, using three separate measures of recidivism. They conclude:

“This study provides evidence that probation is a case disposition used most frequently earlier in the offender's criminal career, but it is just as likely to result in failure in terms of recidivism as incarceration.”

Unfortunately, it is difficult to make any comparison of success rates between probation and parole in Washington from available statistics. As yet I know of no local studies which allow us to accurately compare the rate at which probationers and parolees commit new crimes, though some work along these lines is presently under way by the U.S. General Accounting Office. Their results should be available in early 1976.

At this time I would hesitate to make any firm generalization about the efficacy of probation in Washington state. I would, however, venture to say that after studying the local statistics, I have found no evidence that would contradict the findings of Martinson and others who have seen virtually no difference between probationary and punitive sentences. I don't advocate abolition of probation or use of prison in all cases, but we must look realistically at the effectiveness of each to make rational decisions. The cliché that I often hear in response to my position is that we cannot know if rehabilitation works because it hasn't been tried. The argument continues that we must do more of the same — with more money. There are programs in other states which we *know* have been lavishly funded and compre-



Christopher T. Bayley

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hensive evaluations of their effect on recidivism reveals the same record of failure.

(1) A recent report on the Work Release Program in California concludes that it does not reduce recidivism.

(2) The California Probation Subsidy program represented a massive effort to enlarge and improve the quality of probation, yet a recent report before the legislature there concludes it has not reduced recidivism.

(3) A recent study of the New York Diversion program concludes that it is a failure — in fact, they report it has *contributed* to the crime problem.

II. PREDICTING DANGEROUSNESS.

In his article Judge Horowitz describes the rationale behind his sentencing decisions:

“If I am convinced that a person is dangerous to other people, then I will use prison. If the person is not dangerous, then probation is our usual alternative.”

But the judge fails to describe with any precision the means by which he arrives at his conviction that one offender is dangerous and another is not. What is at issue is not our goal to protect the public, but the limits we will set upon our discretion to do so.

The Denver study referred to earlier attempted to analyze what factors might allow us to predict recidivism, using a list of 24 background and demographic variables such as age, sex, employment, alcohol and other drug use, etc. These are items generally included in pre-sentence reports provided to judges to aid them in their sentencing decisions. The study concluded:

The degree of predictability was very limited in all cases. Having a comprehensive data base of background information, such as the data gathered as part of a presentence report and collected in this study *does not seem to provide good indicators of probable subsequent involvement with the criminal justice system.* (emphasis added)

To base the monumental decision of confinement or freedom on predictions of future conduct presumes powers we as mortals simply do not pos-

sess. Judge Horowitz would argue that we need more information, better testing techniques for predicting dangerousness. But we will never be able to make our predictions accurate enough to justify the necessary margin of error.

I suggest that punishment — and, let's be honest, it *is* punishment whether we call it "warehousing," treatment, or for whatever reasons it might be dispensed — is not just a "tool or treatment" to be used on those who respond to it or are considered dangerous. Punishment should be based upon what is deserved by the crime and the criminal record of the defendant. Punishment represents the moral authority of the state and should be used to signal societal condemnation of criminal acts not vague predictions of future criminality.

III. AUTHORITARIANISM.

As an additional criticism, I think it is dangerously authoritarian and paternalistic to base sentencing decisions on the proposition set forth by Judge Horowitz:

" . . . Most criminals don't think the way you and I think. That's why they are criminals and why they are where they are, and why we are not criminals and why we are where we are. Sometimes we forget that; we tend to think erroneously, that all criminals think the way you and I do."

At another point the judge suggests that criminals are analogous to children and that, just as with children we should apply punishment only to those on whom it will be effective.

This view of the offender as somehow less human, less responsible, less "adult" than ourselves, carries with it the implication that he is less a subject of rights than you or I. Instead of allowing the offender to take responsibility for his acts, we turn him into an *object*, childlike, irresponsible and subject now to *our* paternalistic or authoritarian notions of what is best for him. Do we know how the criminal thinks? Does the judge possess some magical insight into this foreign mind? I submit that (except in special cases where findings of insanity are made) from a civil libertarian standpoint we must assume that the criminal *is* an adult, subject to the same rights

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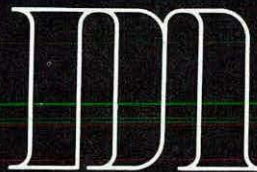
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and responsibilities as you or I—and that to assume otherwise threatens our fundamental rights.

IV. CONCLUSION.

I urge you to read the reports of Robert Martinson and others — the results are in and I can only conclude that it is time for a major change in our philosophy of criminal law and sentencing.

Judge Horowitz suggests that my proposals for more certainty of punishment would be going back to a system which has already failed. Failure is a relative term — we can never eliminate crime, so we will always fail if this is the test — but I would suggest that the treatment model has been a monumental failure — both in terms of justice and equality for the offender — *and* in terms of protecting the public.

Finally, I think that Judge Horowitz's article itself illustrates the key problem of broad discretion in sentencing. At best he has a strong, well reasoned and consistent philosophy of sentencing. But each of our judges (and this applies to prosecutors and members of parole boards as

well) has devised a different philosophy with different goals and emphasis. With such diversity, how do we achieve a fair, consistent and effective sentencing policy? Willard Gaylin, a lawyer and psychiatrist who conducted a number of in-depth interviews with judges describes the problem as he writes of one judge:


“Judge Garfield is a fair man, as fair as we are likely to find. He will treat all his charges with equity. But even had he no measure of personal bias (an impossibility) he, in his person, would introduce a depressing inequity into the system, because one must juxtapose his attitude about incarceration against an unknown Judge Y's. What kind of equity exists in a system where the luck of location, time of event, change of docket — not nature of offense — determines which judge the offender appears before, and therefore at which end of the broad spectrum of potential punishments the deliberation will begin?”

Judge Marvin Frankel of the Southern District of New York says it well:

“Like all good ideas allowed to bloom without pruning or other attention, the notion of individualized justice has gotten quite out of hand. Reverting to elementary principles for a bit, we ought to recall that individualized justice is *prima facie* at war with such concepts, at least as fundamental, as equality, objectivity, and consistency in the law.”

All of us who exercise discretion with regard to the sentencing of offenders realize the awesome responsibility of our virtually unrestricted power. The only way we can make the system more effective (and more just) is to recognize that punishment is fundamental to a system of justice and to limit this unbridled discretion by “steps toward certainty.” Such steps now underway include development of standards for Board of Prison Terms and Parole Board minimums, standards for prosecutors, and talk of a common law of sentencing for judges. The potential for dealing effectively with the crime remains, but only by proceeding in this direction can it be realized. □

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Crimes of Violence

Volume I: Homicide and Assault

Volume II: Rape and Other Sex Crimes

Authors: F. Lee Bailey and Henry B. Rothblatt

Publisher: Lawyers Cooperative, Bancroft-Whitney (1973 with 1975 Supplements)

Simulating a treatise, Messrs. Bailey and Rothblatt's two-volume product should have been edited and packaged in a single volume. While the set is aesthetically pleasing, it suffers from redundancy. Upon close review of the 1,176 sections into which the subject matter is divided, one becomes aware that the content of the volumes is not raised to the level of an annotation simply by the authors' insertion of sub-headings. Furthermore, the criminal law practitioner will gain little from the few case citations offered, since these principally appear in support of matters incidental to violent crimes (e.g., search and seizure, discovery) which are more effectively presented in publications devoted exclusively to such procedural issues. The substance of the two volumes is a breezy reflection upon experiences in the defense of those charged with violent offenses. Nevertheless, the practitioner must benefit from the advice of one as experienced in homicide cases as is Mr. Bailey.

Specific deficiencies relate to the approach of the publication. First, the tenor throughout both volumes is one of preparing the graduating law student or civil practitioner for his or her first murder trial; perhaps a caveat should have been offered concerning incompetency of counsel. If this approach was not intended by the authors, at least five chapters of each volume should have been eliminated. This, again, would accommodate the single-volume product alluded to above. Second, repeated suggestions that a habeas petition will effect a bail reduction are, in this reviewer's opinion, misleading at best. Third, the discussion of defenses is so summarily presented as to offer little practical assistance.

Beyond these crippling disorders, the books afford valuable information concerning proper

methods of police investigation, and discuss in detail the physical properties of such evidentiary items as blood, saliva, semen, footprints and firearms. Further, the authors' suggestions concerning the trial of rape cases are novel and timely.

The defense of a helpful publication never rests. These volumes are of potential benefit to the community but require the rehabilitative efforts of a careful editor.

Keith L. Kessler

Gonzaga Report

The following officers and directors were "elected" at the Bar Convention in Vancouver:
Officers: President — Ronald A. Roberts, Tacoma; Vice President — Phelps A. Gose, Walla Walla; Secretary — John Hall, Chehalis; Treasurer — Ralph A. Alfieri, Seattle. **Directors:** Ralph A. Alfieri, H. Eugene Quinn, Eugene G. Schuster, Charles C. Flower, Richard Mah, Jr., Edward W. Huneke, Patrick W. Crowley.

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Oral argument, Washington State Supreme Court, October 21, 1975.

THE STATE OF THE STATE AUDIT

By Keith L. Kessler, *Associate Editor*

Assistant Attorney General Robert F. Hawth appeared on behalf of appellant State Auditor and Bradley T. Jones, of Davis, Wright, Todd, Riese and Jones, represented the Washington State Bar Association.

Mr. Hawth advised the Court of the history of the issue, stating that the State Auditor had, some years back, requested an opinion from the Attorney General concerning the propriety of auditing the State Bar Association. Upon an affirmative response from the Attorney General's Office, an audit of the Bar Association was conducted in 1968. In November, 1974, the State Auditor appeared at the offices of the State Bar Association and requested an examination of the books for purposes of conducting an additional audit. According to Mr. Hawth, the State Auditor was met by a new Board of Governors, a new president of the Bar Association, and an unwillingness to submit to an audit. To enforce the presumed auditing authority of the State, the Auditor's Office subpoenaed the records of the State Bar Association. In response, a hearing was held in the King County Superior Court before the Honorable James J. Dore, with the result that the subpoena was quashed. This ruling, according to Mr. Hawth, was essentially founded upon a finding by the Court that the funds of the Bar Association are not "public" funds. Further-

more, the Court is reported to have concluded that the proposed audit would violate the separation of powers doctrine enunciated in the Constitution. At this point, Justice Finley inquired as to whether the proposed audit was purely fiscal in nature or whether it additionally constituted an examination of proper performance in the expenditure of funds. Mr. Hawth responded that it was a purely fiscal audit. Justice Finley then inquired as to whether the State Auditor proposed reviewing the manner in which payments were made. Following Mr. Hawth's affirmative response, Justice Finley commented that this indeed seemed to be an audit concerning performance as well, since an audit, in the normal sense, does not encompass an inquiry into the proper manner of expending funds. Justice Stafford then inquired as to whether the Attorney General believed that the funds of the Washington State Bar Association constituted "public" funds. The response of Mr. Hawth was that all funds of a public agency are subject to audit by the State Auditor, even though such funds may not necessarily constitute "public" funds in their entirety or in the technical sense of the term. Again, Mr. Hawth advised the Court that the Attorney General's Office reviews the audit conducted by the State Auditor to determine whether or not there has been a violation of law in the expenditure of such "public"

funds. Justice Utter then inquired as to whether the expenditure of Bar Association funds was not discretionary with the Bar Association. Mr. Hauth replied that it is, to the extent that the expenditures do not violate any law. Justice Stafford then commented that the proposed audit might involve the separation of powers doctrine and then inquired as to whether the State Auditor conducts an audit of the Legislature. Mr. Hauth replied in the affirmative and noted that the State Auditor has been auditing the Supreme Court ever since statehood, pursuant to Chapter 118, Laws of 1888. He further stated that Superior Court judges are also audited to determine whether the requirements of state law have been met.

The concern over proper application of the separation of powers doctrine continued, with Mr. Hauth expressing fear that this doctrine would be rendered meaningless if the Court were to remove the executive authority to audit (i.e., enforce the law) from the State Auditor. Justice Finley suggested that, especially in the context of a performance audit, the Auditor's Office was

exercising an adjudicatory function. Mr. Hauth denied any judicial activity by the Auditor's Office and suggested instead that the Auditor was merely an agent of the executive branch engaged in the enforcement of state law. Justice Hamilton inquired as to whether 1968 was the only year in which the State Auditor audited the Washington State Bar Association. Mr. Hauth responded that it was. The oral argument of the appellant was concluded by an interplay between Justice Finley and the representative of the Attorney General's Office concerning any valid distinction between dues, fees and contributions. Mr. Hauth suggested that the Bar Association was entitled to collect any moneys in its own discretion; regardless of the source of the Bar Association's funds, the records of the Bar Association should be subject to audit. Justice Finley then inquired as to which funds of the Bar Association constitute "public" funds and which do not. Mr. Hauth suggested that such a technical classification would continue to be a question.

Mr. Jones, for the respondent, opened his oral argument by suggesting that the Attorney General's Office has played down the seriousness of the matter — much more is at stake than simply a review of the Bar Association's finances. Mr. Jones noted that the concern of the Bar Association was evidenced by the presence of President Robert Day, Executive Director G. Edward Friar and Bar Attorney Kurt Bulmer. He noted that RCW 2.48 was enacted to establish the function of the Bar Association, and that, by law, the Bar Association had two "public" functions: (1) admission of members, and (2) discipline of members. According to Mr. Jones, "we are a public body only in the sense that we make recommendations to this Court regarding the discipline of our members." Mr. Jones noted that although the matter was not part of the record before the Court, the Bar Association is independently audited by a private group and the results of this audit are made available to the membership of the Bar.

Justice Rosellini inquired, "If the Supreme Court is audited, why not the Bar Association?" Mr. Jones pointed to the distinction between state agencies and professional associations. Justice Rosellini inquired as to whether or not the mem-

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bership fee of the Bar Association was set by the Legislature. Mr. Jones replied that although the fee was initially set by the Legislature, the Board of Governors has since increased the fee without first seeking permission from the Legislature. He stated that the Bar Association did not believe that it was either proper or constitutional for the Legislature to usurp either the power inherent to the Bar Association or the power of the Court. Justice Rosellini inquired, "How do we know you are spending money properly?" Mr. Jones stated that the Bar Association would be happy to offer any assurances of proper expenditures that the Court requested. Justice Rosellini retorted that "It's such a painless thing to be audited" that it raises a doubt in his mind as to the propriety of the current manner of disposing of Bar funds. Mr. Jones: "I'm astonished that a member of this Court would feel that way." He noted that the real issue underlying the Bar's opposition to formal auditing was the categorization of the Bar Association as a "public agency." Justice Stafford agreed, suggesting that, painless or not, the issue is, "Does the State Auditor have the power to audit the Bar Association?" Justice Finley then offered some background concerning the origin of state bar associations, referring back to the 1930's. He commented that in North Carolina, from which he hails, the original state Bar Association was purely voluntary in character and characterized it as a loosely-knit and relatively powerless private organization. Today, he said, there exists a two-bar system in North Carolina: one private and relatively powerless, and one public. Justice Finley openly agreed with the respondent that just because the Legislature passes an Act concerning the Bar Association, it does not necessarily become a state agency subject to audit. Mr. Jones added that there exist in this state several other professions whose organizations are subject to the licensing authority of the state, but who are not subjected to state audit. Again Mr. Jones referred to the Bar Association as a "state agency" only for the limited purposes of admitting and disciplining members. He cited examples of attorneys issuing subpoenas "in and for the State of Washington," notaries signing documents "in and for the State of Washington," and ministers performing mar-

riage ceremonies as agents of the State of Washington, adding that these state functions do not render these individuals or group of individuals "state agencies." Mr. Jones then challenged the propriety of an audit by the state upon the bases that (1) the auditor has no standards for auditing a private group such as the Bar Association (i.e., all financial expenditures by the Bar Association are subject to the exclusive discretion of the Bar Association); (2) the Bar Association is not a public agency which by law can be subjected to a state audit; (3) the Bar Association is already audited by certified public accountants, with results of the audit openly disseminated to members of the Association; and (4) ordinary governmental standards and regulations do not apply to the activities of the Bar Association (e.g., client indemnity fund, continuing legal education).

In rebuttal, Assistant Attorney General Hauth charged that the Bar Association itself requested state agency classification; if the Association does not now wish to be audited, it can go to the Legislature and say so. Concerning the client indemnity fund and the continuing legal education program, Mr. Hauth argued that the public does have an interest in the protection of the citizenry against incompetent and dishonest attorneys. Justice Finley offered the thought that while the Court welcomes an audit by the State Auditor, such an audit is permitted strictly as a matter of comity; however, the Court must and does retain an individual identity and cannot be made subservient to the executive branch. Justice Rosellini commented that the resistance of the Bar Association appears to be based upon some fear of prohibition by the State regarding its expenditures for such things as dances and cocktail parties. Justice Stafford inquired as to whether or not it was the opinion of the Attorney General that the Legislature or the State Auditor can have any interest in monitoring the client indemnity fund. The response of Mr. Hauth was that the Auditor's Office does have an interest to the extent that it ensures that the client indemnity fund is not an unlawful expenditure.

With that, the Court retired to resolve what appeared to be irreconcilable positions among its members. □



The Board's Work

Board of Governors Meeting October 17-18, 1975 Washington Plaza Hotel, Seattle

Notice of Disciplinary Action to Federal Courts

By personal request from the Chief Justice the Board considered the problem that the federal courts do not learn of disciplinary action taken against attorneys. The Board approved making a request to the Supreme Court to amend the rules permitting notice of all disciplinary action to be passed along to the U.S. District Court and to the 9th Circuit.

Indigent Appeals

The Board will support the Supreme Court's request for supplemental appropriations so that indigents can retain the same counsel or Public Defender at the appeal level as at the trial level.

Grey Power

Ed Raftis was appointed to study the feasibility of providing recognition to attorneys who have practiced fifty years or more or who have attained other arbitrary longevity goals.

Group Insurance

A 3-man committee was established to review the entire group insurance coverages for the membership including, life, accident, health, etc.

SJR 101

The Board rejected the opportunity to sponsor a pre-formed Task Force seeking a grant to study the Judicial Article. The Board was advised that the Young Lawyers Section had resolved to oppose SJR 101 and approved the Section's request to release to the public and press their action. The Board then voted to also oppose SJR 101, noting that the Judicial Article gives the Legislature too much control over the Judiciary and infringes upon the separation of powers.

Board's Tentative Meeting Schedule

Nov. 21-22	Port Ludlow
Dec. 12-13	Hanford House, Tri-Cities
Jan. 16-17	Tyee Inn, Olympia
Feb. 18-22	Palm Springs, with Western States Bar Conference
Mar. 26-27	Vancouver, B.C.
April 23-24	Victoria, B.C.
May 14-15	Coeur d'Alene, Idaho
June 10-11	Salishan, Oregon
July 16-17	Kahneeta, Oregon
August	Sun Mountain

Eligibility of Board of Governors

The Board approved a rule change prohibiting a Board member to be nominated for another term if he has been previously elected to the Board.

Budget-Financial Report

There was no financial report because the auditors are reviewing the books. A question was raised as to the amounts paid as honorariums to Judge Sirica and Frank Gifford. Judge Sirica was paid \$3,000 plus expenses and Frank Gifford was paid \$2,000 plus expenses. It was noted that Judge Sirica is not going to seek reimbursement for his travel expense, as a token of his appreciation to the Bar.

Malpractice Insurance

The Board decided to encourage the membership to join or obtain the Marsh-McLennan malpractice insurance. The plan is a much better value than any other plan available, they noted. The current rate is \$170 which includes \$25.07 to the broker, \$144.93 to the insurer.

New Rules for Expenses

The Budget Committee suggested the following rules be followed for expenses of Board meetings. Hotel expense shall include the night of the last day of the meeting. Transportation shall be paid for each Board member, round trip, but not for spouses. All meals will be included, for Board members and spouses, and cocktails and wine with meals only will also be covered. Tips will also be included. Board members will pay their own bills and then voucher the Bar Office for reimbursement.

Annual Meeting — Spokane?

There still appears to be concern over whether a first-class convention can be had in Spokane. Accommodations will be spread over a number of hotels and motels, and the food functions may be difficult to arrange.

John Heath is inquiring into the ability of Spokane to put on luncheons and a dinner dance in some manner other than buffet-style.

It was noted that room rates and general expenses will be substantially lower than at Vancouver.

The Board is also anticipating higher attendance if the compulsory CLE rule becomes effective.

Increased Mileage Allowance

Mr. Redman proposed an increase in the compensation for mileage on bar-related matters from the current 10 cents per mile to a proposed 15 cents per mile, noting that while lawyers are willing to underwrite part of the expense for Bar Activities, non-lawyers should not be so imposed upon. Betty Fletcher noted that her clients are charged 15 cents a mile. She moved for a raise in the mileage allowance for Bar matters up to 15 cents per mile. The matter passed.

Compulsory Fee Arbitration

The entire arbitration structure has been potentially emasculated because an attorney can refuse to submit to the determination of the arbitration board pursuant to the above language. A problem recently arose where an attorney refused or failed to appear before the fee arbitration board and the matter of fees was arbitrated in his absence. Mr. Redman inquired whether the problem was really the publication of the results of the arbitration, suggesting that the arbitration board engages in the function of a town crier, with the result that a member is chastised for charging high fees. Mr. Friar explained the history underlying creation of the fee arbitration board, noting that the disciplinary board had suggested that most matters brought before it were fee disputes, not disciplinary matters, and therefore a fee arbitration board could undertake fee problems and leave the remaining disciplinary action for the disciplinary board. Mr. Raftis suggested that perhaps the matter should be sent to the disciplinary board to find out whether the Board of Governors can compel attorneys to (1) participate in arbitration and (2) be bound by the decision. Mr. Walker noted that the decision to arbitrate was contractual in nature. President Day appointed Mr. Walker to research the issue and report back to the Board of Governors.

Compensation of Bar Examiners

Currently bar examiners are paid \$200 for the January Bar and \$500 for the July Bar. Originally it had been estimated that bar examiners spend from 3 to 5 minutes per question in answering and grading bar exams. Cleary Cone had esti-

mated that the time is closer to 15-20 minutes per question. This amounts to 100-150 hours total time spent per examiner. Mr. Friar passed along a recommendation from Keith Grim that would increase the compensation for bar examiners to \$1000 for the July exam and \$500 for the February exam. Mr. Friar commented that this was still a token amount but would mean a little bit more to the examiners. Mr. Friar further suggested that the Board might try it for a couple of exams, adding "I'd hate to give up the charm of having the person who drafted the question grade the answers." Mr. Redman inquired as to whether or not there was a difference in the number of examiners participating in the January and July exams. 24 examiners participate in each exam. Concerning the question as to whether the bar exam was self-sustaining through examination fees, Mr. Friar responded that the bar association always had to supplement the bar exam to some extent and that this was one reason for the recent increase in the bar exam fee. In comparing our fees with those of other states, our charge is less than that of Oregon and is approximately average for the entire country, although, generally speaking, we charge slightly less than most states. Mr. Raftis inquired as to whether or not our bar exam could be self-sustaining by increasing the examination fee to applicants. Mr. Friar responded that the current charge of \$125 appears to be a burden upon recent law school graduates. President Day indicated he wanted a study on the matter.

Medical Malpractice Legislation

The Medical Association has approved a 14-point plan for proposal to the Legislature which includes compulsory arbitration and a \$300,000 maximum limit on malpractice claims. The Board voted to oppose these aspects of the plan. President Day stated that the legislature seems to have no business in such matters in this state and stated that we might similarly have the legislature set doctors' fees for appendectomies and the like. Concerning the arbitration provision, President Day noted his opposition by suggesting that we would have to admit that the Anglo-Saxon judicial and jury system in this country has failed

and he was not of the opinion that it had.

Legal Services Programs

The current problem facing Legal Services' program was that in areas such as Yakima, Bremerton, Port Townsend and Olympia, Legal Services offices would no longer be funded by the Community Services Association after March 21, 1976. Greg Dallaire stated that these Legal Services offices need to be picked up by the Legal Services Corporation and he asked that the Board support this move by resolution. The motion was made and passed. Mr. Dallaire then continued concerning the NLADA convention in Seattle, scheduled for November 12-15, 1975, at the Olympic Hotel. Mr. Dallaire stated that the approximate expense of the convention would be \$42,000 and added that he expected approximately \$36,000 return. Mr. Dallaire stated that he did not expect the Bar Association to pick up the deficit but merely requested \$1,000 to cover travel expenses of guest speakers at the convention. He noted, as well, that Mr. Bailey from Young Lawyers was to request \$500 as well from the Bar Association as a contribution for the same purposes. Mr. Riddell therefore moved that the Board approve payment of \$1500 to cover travel expenses for panelist-speakers. The motion passed.

Corrections Committee Change

Croil Anderson had resigned as chairman of the corrections committee due to his new position with the Seattle-King County Bar Association. Mr. Raftis nominated Don Chisum as chairman of the corrections committee, and the motion passed.

Judicial Council

Jack Ripple has resigned from the Judicial Council. Mr. Redman moved that Wally Meyer be appointed to the Judicial Council; the motion passed.

Disciplinary Board

A motion was made to appoint Paul Steere as vice-chairman of the disciplinary board. The motion passed. □

475 CANDIDATES PASS WASHINGTON STATE BAR EXAMINATION

A total of 475 candidates successfully passed the Washington State Bar Examination administered in July.

The number of candidates who sat for the examination was 678, the largest number for an examination in the history of the Washington State Bar. 70% of the candidates passed the test. The names of the persons who passed the July examination are as follows:

AUBURN

James Patrick Duffy, Jr.
Franklin Lee Dennis

BAINBRIDGE ISLAND

Peter K. Mair

BELLEVUE

Kathy Ann Cochran
Felice Phillips Congalton
Lindsey D. Cotterell
David Harry Deits
Pamela Hooper Feinstein
Louis Daniel Fessler
Robert Jason Henry
Stephen Bruce Johnson
John W. Martin, Jr.
John E. Mooring
Paul O'Neil
George Christopher Pagos
John C. Peick
Wayne Marshall Perry
Richard Lee Phillips
Mark Alan Rossi
Stephen Alan Smith
Carlos Ygnacio Velategui

BELLINGHAM

Daniel Meade Warner

BOTHELL

John Frederick Karp

BREMERTON

Robert Jenness Banghart
James Charles Lawrie
Albert Dean Pickett

BURIEN

Truman S. Fuller, III

BURTON

Robert Martin Krinsky
Mary R. Smith

CASHMERE

William Joseph Smith

CENTRALIA

Steven Ray Buzzard
Kenneth G. Johnson
Stephen Ellis Oliver

CHATTARROY

Joyce C. Brekke

CHENEY

Steven Craig Miller
Linda Miller Youngs

EDMONDS

Donald Charles Bell
Mark Richard Bucklin
Paul R. Carlson
Jeffrey Bruce Wells
Rupert James Pidduck, Jr.

EVERETT

Kenneth L. Green
Larry Allan Jelsing
Robert Bliss Willoughby

FEDERAL WAY

David Jay Sadick
Jeffrey Alan Smyth
Daniel Joseph Tighe

GIG HARBOR

Craig Charles Beles

GUEMES ISLAND

Lowell Howard Ashbach, Jr.

KENT

John Wayne Mackey
John Francis Scanlon

KENNEWICK

Timothy W. Mahoney
Jerry M. Makus

KIRKLAND

Diane Tremmel Colvin
D. Mark Moneymaker
Richard R. Nunn
Steven Patrick Recor
Lyle Kenai Wilson

LAKE FOREST PARK

Richard B. McNees, Sr.

LYNNWOOD

James Edward Britain

MAPLE VALLEY

Scott Howard Clark

MARYSVILLE

George Bly Wilcox

MERCER ISLAND

Philip G. Arnold
Stanley James Bensussen
James Thomas Burnett
R. R. DeYoung
Dennis Frederick Gerlt
Robert Charles Grayson
James W. Hoag
Terence K. McGee
Bruce Douglas Pelton
Steven Michael Ringold
George Hunter Smylie
Martin Wolff
Christine Wyatt

MORTON

Dale A. McBeth

MOUNTLAKE TERRACE

Michael Albert Clarke
David Anthony Little

NEWPORT

William Scott Lowry

OAK HARBOR

Thurman William Lowans
Michael Mert Waller

OCEAN SHORES

H. James Zachor, Jr.

OLYMPIA

Gregory Claire Abel
Christine Carol Clishe
Roland J. Cole
Nixon J. Handy
Richard Alan Klobucher
John Sarsfield Lynch, II
Dennis Lance McCarty
Marianne McGettigan
Alexander Weal Mackie
Richard Antoine Paroutaud
Carol A. Smith
Edward Henry Southon
John R. Wasberg

OPPORTUNITY

Gerald L. Wear

PESHASTIN

Stephen Douglas Tangen

POMEROY

Joshua Frederick Grant VII

PORT ANGELES

Gary Richard Dolcy
David V. Johnson

PORT ORCHARD

Jerry Michael Dolan
Richard Ralph Stocking

POULSBO

James Michael Riehl

PUYALLUP

Cathy Vertrees Canorro
Robert Harris Wood

REDMOND

Peter Gerard Beeson
Bruce Earl Larson
Pamela D. O. Larson
Henry Leland Skidmore

RENTON

Glen Robert Clausing
William Tracy Grimm
Michael Martin Hanis

RICHLAND

Richard Lee Rolph

RIDGEFIELD

Robert Richard Northcott

RITZVILLE

Brian Henry Miller

SEATTLE

David M. Abercrombie
Gary N. Ackerman
Susan R. Agid
James Wallace Aiken
John D. Aikire
Joan Benefiel Allison
Sandra Louise Andina
Stephen Tadashi Araki
Gregory John Arpin
James Louis Austin, Jr.
Timothy Laird Austin
Stanley G. Bakun
Mary Kay Barbieri
Richard L. Bartholomew
Julia I. Baute
Pamela J. Bayer
James Dennis Beback
Judith E. Bendich
Bruce Kendall Bentley
Bruce Kendall Berreth
Janis Phillips Bianchi
Jeff Blumhager
William Barnard Boe
Brooks Rolf Borgersen
Carmela May Bowns
Edward Franklin Boyer
Joseph Rosser Breed
Donald E. Brown
Hannah Marie Callaghan
James Cortland Carmody
Dan Wilson Chandler
Fay Louise Chapman
John Michael Chin
Gary Theodore Chrey
Arthur Cary Claffin
John Michael Clark
Paul Clark
Harriett Mary Cody
William Berggren Collins
Charles Johnson Coolidge
Stephen Roswell Countryman
David John Cunningham
John Berkeley Curtis
Paul Tolbert Dalton
Peter Anthony Danelo
Raymond L. Davis
Daniel Gilbert Denton
Bart Dillon
Kevin Patrick Dolan
Janis Dystel
Laura E. Eckert
Mary Ann Ekman
William Arthur Ells
Rudy Albert Englund
Christopher Carson Evans
Sidney Eldon Farcy
Steven Jeffrey Fields
Richard Allan Finnigan
Michael Maurice Fleming

Robert A. Free

Alexander A. Friedrich
G. Geoffrey Gibbs
Michael Moran Gilleran
Cynthia Keebler Gillespie
Karen Elaine Glover
Raymond Goad
Richard Jay Goldsmith
John Anthony Goodall
Paul Blair Goodrich
Carl Ben Goodwin, Jr.
Jeffrey M. Grief-McMartin
Randall Ralph Hall
Spencer Hall, Jr.
Ronald Alan Hammett
Ingrid W. Hansen
Arthur Harold Harding II
Karin Hardisty
John Richard Herzog
James H. Hicken III
Stephen Joel Hillman
Christopher Lee Hirst
Douglas A. Hofmann
Michael Walter Hoge
Betsy Ross Hollingsworth
Steven James Hopp
Frederick Albert Homing
Loren David Hostek
Gary Dennis Huff
Frederick Walton Hyde, Jr.
David R. Israel
Henry Dave Jasen
Judith Jeffers
Barbara Dencie Johnson
Katherine Dale Kari
Fred J. Kaufman
James Philip Kintner
Richard A. Knutson
Russell Alan Kolsrud
Dennis W. Lane
Thomas Steven Leigh
Nancy Rowen Levy
Brian James Linn
Lawrence Ballis Linville
James Robert Lisbakken
James Richard Lobe
Gary Faye Locke
Margaret Ellen McCartney
Evelyn Claire McChesney
Philip P. McGimpsey
Joseph E. McGough
Mary Margaret McKeown
Thomas Jeffrey McLaughlin
Timothy James Mackin
Mary Bellesa Manous
Deborah Maranville
Patrick W. Mason
Otto Steve Matsch
Charles D. Maurer, Jr.
Ernest Eugene Merges
David Lawrence Moe
E. Michele Moquin
John Roling Muenster
Philip A. Nausid
Jeffrey Lowell Needle

Christopher S. Nelson

Robert Dean Neugebauer
Carol Sundquist Niccolls
Dennis Robert Nollette
Andrew William Olsen
Scott B. Osborne
Gerald William Paulukonis
Mark William Pennak
Katrina Campbell Pflaumer
T. Anthony Platter
James Dudley Porter
Linda Potter
John Quill Powers
Patrick Edward Pressentin
Kenneth Mark Puro
Manuel Hilarion Quintana
John Woodruff Rankin, Jr.
Eric Redman
Arlana Gay Renders
Lucy Roberta Richard
Leland G. Ripley
Palmer Robinson
William Peter Roehl
Greg Alan Rubstello
Anthony Angelo Russo
Antonio Reyna Salazar
Sally Rebecca Sawtell
Thomas Paul Schlosser
David Schnapf
Daniel Clinton Sever
Thomas Sean Sheehan
Deborah Anne Shore
Marilyn Grace Showalter
Stephen Charles Sieberson
Robert G. Sieh
Ian Richard Sievers
Laurel Smith
Ralph Michael Smith
Timothy Sr. Clair Smith
Martin Scott Smouse
Eldon John Spencer, Jr.
Shannon Sperry
Christopher L. Stamos
David Frank Stobaugh
James Brian Stotzer
Terri Jean Stoneburner
Stephen Kolden Strong
Robert Arthur Sutton
Robert G. Swisher
William James Symonds
Daniel David Syrdal
Gary James Taylor
Carol Jane Miller Teather
Theodore Michael Therriault
Harold August Thoreen, Jr.
Lee Arthur Thorson
Richard Jonathan Troberman
Jay Uchida
Mary Elizabeth Van Gemert
Peter McNaughton Vial
John Paul Watts
Susan Lee Weinstein
James F. Whitehead III
Janice Whitley
Nancy S. Whitten

Asher B. Wilson
Bruce Paul Witenberg
Frances Mei Soo Woo
John Paul World
Alan Y. C. Yong
Claire Youmans
Donald Michael Young
Stephen Paul Zagelow

SPOKANE

Richard Carl Agman
Richard Patrick Algeo
James Arthur Anderson
Frank Vincent Bartoletta
Edwin Steven Bennett
Arthur J. Bieker
Ronald Lynn Bliss
Edward Thomas Block
Douglas J. Brajcich
Laurence D. Briney, Jr.
Philip S. Brooke III
Kelly Nolan Brown
Daniel H. Brunner
John Francis Bury
William Louis Cameron
Walter George Clayton III
Thomas Dean Cochran
Robert Harry Coon
James S. Craven
John Roger Crickman
Steven A. Crumb
Charles John DeBruler
James Bradford Doyle
James Edward Egan
Warren Howard Fischer, Jr.
John Paul Giesa
John P. Gleesing
Edward J. Goss
Steven N. Grovdahl
Alice L. Haenle
George Isami Hamano
Craig W. Hanson
Patrick Timothy Hayes
Gary L. Hemingway
David Howard Herman
Willard Francis Huss
Bruce Lee Ireland
Peter Joseph Johnson
George Stephen Karavitis
Kenneth H. Kato
Eddie A. Kauzlarich
David Daniel Kilpatrick
Douglas Craig Lewis
Tommy L. Lewis
James Stephen McLean
H. Tony Martin
William Carl Maxey
Royce Howard Moe
John Francis Nichols
Kathleen M. O'Connor
Gayle Ogden
Roger J. Peven
Gregory Irwin Potegal
Peter David Rayner
James Earl Reed
Clark H. Richards

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Scott K. Ross
David Adam Saraceno
Walter L. Schefter, Jr.
Allen Louis Schwenker II
D. Jean Shaw
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Carl Nathan Warring
Kenneth K. Watts
Randall Joseph Watts
James Anthony Whitaker

TACOMA

Gary Michael Abolofia
William Louis Beecher
Richard Hugh Benedetti
William Charles Boehm
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Ronald W. Greenen
Merton Allen Hollister
Stephen Wolff Horenstein
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Brian G. Hipperson

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G. Scott Beyer
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James R. Tuttle
Lee Reichelderfer Tyner
Hamilton Underwood
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Around the State

SOUTH KING REPORT

By JAMES L. VARNELL

Justice **Robert F. Brachtenbach** spoke to the October meeting of the South King County Bar Association. Topics discussed included proposals for mandatory continuing legal education, auditing of trust funds, compulsory malpractice insurance, and the general rule making process of the Supreme Court. Justice Brachtenbach was especially concerned that members of the bar make known their thinking to the Supreme Court regarding any proposed rule changes. Guests included King County Superior Court Judges **Frank J. Eberharter** and **Peter K. Steere**, and **Robert R. Beezer**, president of

the Seattle-King County Bar Association.

The roster of South King County attorneys continues to grow. **Gary F. Faull** and **Richard A. Jackson**, both 1974 graduates of Northwestern College of Law, Lewis and Clark College, Portland, Oregon, are now practicing in Renton. Faull is with the firm of Gouge & McBeth, while Jackson is with Roberts & Anderson. **Lawrence J. Warren**, a graduate of South Texas College of Law in Houston, is associated with Shellan & Pain, also in Renton. Two recent University of Puget Sound Law School graduates, **Michael E. Nelson** and **Janet K. Spencer** are now practicing in the area. Nelson has associated with **Bruce E. Durocher**, which allows Durocher to vacation in

Switzerland without requiring **Bill Christie** of Seattle to temporarily take over Durocher's practice. Ms. Spencer is associated with **Douglas F. Albert** in Federal Way.

The South King County Bar Association was well represented at the annual bar convention in Vancouver. The law firm of Curran, Kleweno, Johnson & Curran had one hundred percent representation, if attendance at the local golf course was included. The "talk" of the convention was the sartorial splendor of **Tom Buckneil**. We know that Tom didn't have a wardrobe when he left Seattle, so it's possible that his impeccable attire could have been purchased along the way in his home, Sedro-Woolley. At one of the gatherings this reporter had an opportunity to discuss the monthly report to the *Bar News* with **Paul Luvera**, reporter emeritus of the Skagit County Report.

For the first time in three years the all-attorney softball team of Pro Se, managed by **Jim Grutz**, failed to capture the Columbia League title. This could be attributed in part to the injury suffered by veteran hurler and United States Magistrate **John L. Weinberg**. Lackluster hitting, with the exception of **George Bennett**, **John Hoerster**, **Jack Strother**, and **Tom Clark**, among others, contributed to the second place finish.

THURSTON-MASON REPORT

By FRED D. GENTRY

The results of the recent bar exam added the following new

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lawyers to our area. **John Lynch** is joining his father and uncle at Lynch & Lynch. **Alien Swanson** is joining Pebbles, Swanson and Lindskog. **Frank Dennis** is joining Fuller & Fuller. **Walter Schefter** is joining White & Adams. **Christine Clishe** also passed the Bar.

Frank Owens, at the October meeting of the Thurston-Mason Bar Association, answered all the questions you wanted to know but were afraid to ask about the Washington Lawyers Service.

YAKIMA REPORT

By **GARY G. McGLOTHLEN**

New faces and offices have changed the make-up of the Yakima County Bar Association for the better. Being the women's libber that your editor naturally is, we give first congratulations on attorney applicant, **Susan England**, attorney applicant from the State of California, who recently passed the Washington State Bar and with her husband has chosen Yakima as her new home. Susan has two children and has previously practiced mainly in the area of workmen's compensation clients. **William C. Kerns**, a 1974 graduate of Gonzaga, a 1975 graduate of the University of Florida, with a masters degree in taxation, is now associated with the Velikanje firm, doing the work that **George Velikanje** should be doing because George is out busy being the first Vice-President of the Greater Yakima Chamber of Commerce. **G. Scott Beyer**, a recent output of the Willamette School of Law

has joined the Gavin firm. Not to be outdone, **Roland L. Skala**, from Great Falls, Montana, also a recent output of Gonzaga Law School, is now an associate with the firm, Weeks, Buren, Thorne and Dietzen. **Walt Weeks** needed another associate because **Tom Dietzen** became partner as of October 1, 1975. Guess what work Tom Dietzen is now assigning to Ron? **David Waterbury**, a 1975 graduate of the University of Puget Sound is now Deputy Prosecuting Attorney. **Jeffrey Sullivan**, the Prosecuting Attorney has assigned Dave to get his feet wet in prosecuting cases at the District Court level. We have a feeling that the weight violations reported by weighmaster **David Waterbury** (father of the young deputy) may receive more atten-

tion than they have in the past because if Dave goes home without a successful prosecution of those violations, he'll have to explain his actions at home.

The Yakima County Bar, in its infinite wisdom, awarded the Archie Bunker award to **Doug Peters** of Selah. The award was not made for breaking new ground in the field of farming law as some suspect, but for talking about it so much to the newspapers. President **Norm Nashem** reports that the Bar has also voted to oppose the proposed judicial article being presented to the voters as a constitutional amendment in this fall's election. Any inquiries from the Washington State Bar should be addressed to our secretary, who shall remain unanimous.

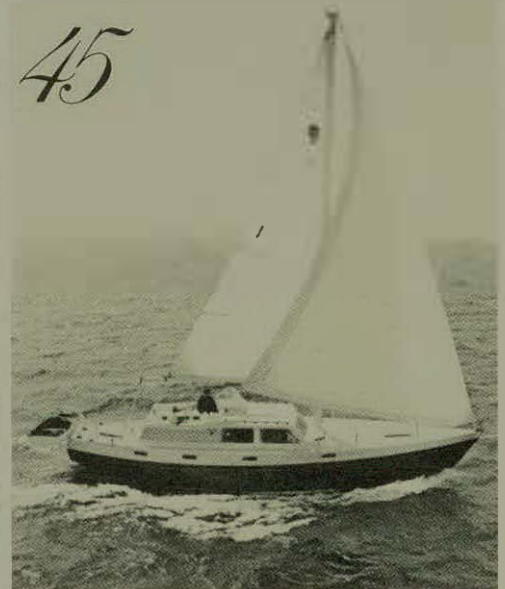
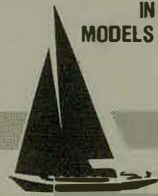
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Disciplinary Board

It has come to the attention of the Disciplinary Board that many members of the Bar are unclear as to who may practice law in the State of Washington when the practitioner is not a member of the State Bar. The following quote from a letter recently sent to a firm which allowed one of its clerks to practice improperly may give some guidance on this matter.

You are advised that Admission to Practice Rule 7 has four requirements for those persons wishing to appear as counsel when they are not members of the Washington State Bar. (1) That individual must be presented by an active member of the Washington State Bar. (2) Such individual must be a member in good standing of the bar of another state. (3) He must also be a resident of and (4) maintain a practice in such other state. An out-of-state attorney must meet all four of these requirements or he is in clear violation of APR 7.

You are advised, that contrary to the allegations in your letter, the rules of the Supreme Court concerning admission to practice cannot be waived or modified by a lower court. The Supreme Court has the ultimate authority over who shall appear in any of the courts of this state.

It should be understood that the Board believes this type of circumstance need not happen and in the future intends to deal more substantially with this type of violation.

Members of the Bar should also review Rule 9 (The Legal Intern Rule). That rule is inapplicable where the alleged intern is not registered with the Bar or where more than a year has passed since the alleged intern's graduation from law school. Particular care should be taken under the Internship Rule to take into account the "supervising attorney" requirements of that Rule.

Practice of law in this state is restricted to:

(1) Members of the Washington State Bar. APR 7A.

(2) Duly qualified members of another Bar in association with a Washington attorney. APR 7A.

(3) Duly qualified members of another Bar representing indigents while supervised by a Washington attorney. APR 7B.

(4) Duly qualified legal interns. APR 9.

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WHAT'S GOING ON WHEN YOU'RE NOT LOOKING?

By Malcolm L. Edwards

How is your appellate case really decided? You know that three, five, or nine judges make the decision; but you only have eye contact with the decision makers for about one hour in this process that may take more than a year. Just what is happening to your case when you're not looking?

The answer to the question posed is of more than academic interest. Your job is to persuade the judges, and you'll be able to do it better if you know the way the decision making process works. The National Center for State Courts will soon propose changes in the internal operation of the appellate courts of this State. These changes, if implemented, could have a significant impact on the appellate justice system. And you won't be able to evaluate the proposals and influence the decisions about them unless you know what's going on now.

This column tracks the internal decision making process in an appeal first filed in the Court of Appeals. It is not about handling writs. The procedure is stated without comment. The writing is rather dry, so you'll have to be self-motivated for this one. I'll have some opinion and comment in later columns.

Court of Appeals: Initial Screening

Each Division of the Court of Appeals has a commissioner who is an attorney and considered a career employee. The commissioner is employed by, and serves at the pleasure of, all of the judges in the division. The commissioner's role is not defined by statute or rule. Rather, each division determines for itself the functions of its commissioner. The commissioner in each of the three divisions initially screens every appeal, but

the extent and purpose of that screening varies from division to division.

The principal purpose of the screening in Divisions I and II is to assist the judges in determining which cases should be certified to the Supreme Court for initial disposition on review. In Division III, screening also assists the court in making case assignments. The initial screening in Division III is more extensive. Screening in Division III is to assist the judges in making certification decisions, deciding which cases should be disposed of by per curiam opinion, determining whether the court should suggest to counsel that oral argument be waived, and to assist the court in making case assignments among the judges.

In Division I, the commissioner screens each case and tentatively places it into one of three categories: (1) those appropriate for Supreme Court disposition, (2) so called "normal appeals", and (3) appeals which do not warrant Supreme Court review. The commissioner does not prepare a written summary of each case.

In Division II, the commissioner rates each

appeal based on its difficulty and assigns a rating to it ranging from one-half to three plus. A short, written summary is prepared by the commissioner for each case and a copy of the summary is given to each judge.

The commissioner in Division III personally reviews each appeal. The commissioner personally prepares a memorandum for each appeal which he feels is most likely to be determined by a per curiam opinion. The remaining appeals are assigned to a staff of two part time legal interns. A rather extensive memorandum is prepared for each case. It consists of a concise statement of the facts, the issues, and the parties' contentions on review. The Commissioner reviews the memorandum prepared by staff before they are circulated to the judges.

Court of Appeals: Certification Decision

In Division I and II, the judges determine in conference whether an appeal should be certified to the Supreme Court. In Division III, this determination is ordinarily made without conference: each judge notes his opinion on a cover sheet attached to a group of screening memoranda given to all of the judges. The commissioner tabulates the responses and presents the tabulation to the Chief Judge who may discuss particular cases with the other judges if there is lack of unanimity of opinion on certification.

Supreme Court: Review For Transfer

In a substantial number of cases, the Court of Appeals forwards appellant's brief to the Supreme Court where it is examined by the Supreme Court clerk or his staff to determine whether the appeal warrants transfer to the Supreme Court. In about one-fourth of these cases, a short memorandum is prepared by the Clerk's office with a recommendation whether the case should be transferred to the Supreme Court. The Supreme Court justices, in departmental conferences, evaluate only those cases for which a written memorandum is prepared and determine whether each case will be transferred to the Supreme Court. For the 12-month period ending December 1, 1974, 384 appellant's briefs were for-



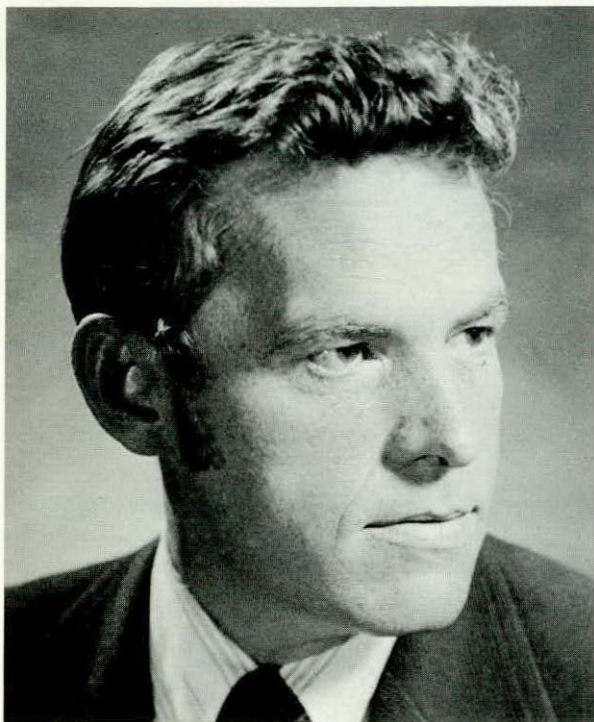
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warded to the Supreme Court for review, written memoranda were prepared on 98, and 15 of these cases were transferred to the Supreme Court for initial disposition.

Court of Appeals: Assignment of Case to Judge

Each case which is retained for disposition by the Court of Appeals is assigned to an individual judge. Cases are assigned at random and by lot, generally with an equal number of cases assigned to each judge for each of the three sessions in a year. In Division II, there may be an unequal allocation of cases as the difficulty of the case is taken into consideration in allocating the cases. In Division III, all cases in a given session involving a similar issue are assigned to the same judge, but subject matter assignments are rotated from session to session so one judge does not



Malcolm L. Edwards is with the Seattle law firm of Edwards and Wetherall. He is Chairman of the Task Force on Revision of the Rules on Appeal and a member of the Washington Appellate Court Advisory Committee. A substantial part of the work of his firm is in the field of appellate advocacy.

become the court specialist in a given field.

Each judge on the panel to hear the case is given the briefs of the parties and any screening memorandum, usually immediately prior to the commencement of the session of the court at which the case will be argued orally.

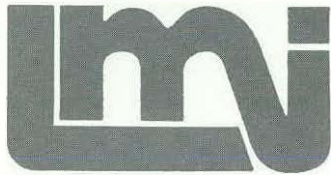
The treatment of a case from this point forward depends on whether the case is determined to be one that may be disposed of by a per curiam opinion.

Court of Appeals: Pre-Argument Procedure for Per Curiam Decisions

In each division, between 36 and 50 cases per year are decided by per curiam opinion. In Divisions I and II, the judge to whom the case is assigned decides if the case should be referred to the commissioner for preparation of a research memorandum and draft per curiam opinion. In Division III, the judges decide at the time of preliminary screening which cases should be referred to the commissioner for preparation of a draft per curiam opinion. In all divisions, a single judge is responsible for the case in which a per curiam opinion is prepared. The judge may, and frequently does, change the draft submitted to him by the commissioner. The per curiam opinion is circulated to the other judges on the panel and is subject to change or modification by them in the same manner as other circulated opinions. A case originally classified for per curiam disposition can be reclassified and decided by a signed opinion.

Court of Appeals: Pre-Argument Procedure for Cases Disposed of by Signed Opinion

Most cases are decided by a signed opinion. In these cases, the law clerk of the judge to whom each case is assigned prepares a written memorandum for the case. No standard memoranda format exists. In Divisions I and II, each memorandum ordinarily includes a summary of the facts, a statement of the issues, and a summary or analysis of the legal contentions of the parties. The individual judge's law clerk in Division III starts out with a comparatively exten-



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sive screening memorandum. Thus, the pre-argument memoranda prepared in Division III usually contain a more detailed legal analysis than those in the other divisions. A recommended decision is ordinarily not included in memoranda prepared in Division I and may or may not be included in those prepared for Divisions II and III.

A copy of the memorandum for the case is given to each judge on the panel in advance of the date scheduled for oral argument. The memorandum does not have the express or implied stamp of approval of the judge whose law clerk prepared it. A judge may and often will view the issues different than in the manner stated in the memoranda. The memoranda are viewed by all of the judges as simply a writing prepared by a law clerk who has reviewed the case. The ultimate decision of each of the judges on the panel is the personal judicial decision of the judge.

Court of Appeals: Pre-Argument Conference

Divisions II and III discuss each case in conference prior to oral argument of the case: Division I does not. In both divisions that have pre-argument conferences, the assignment judge makes a verbal presentation of the facts and issues. The law clerk who prepared the memorandum usually attends the conference when the case the clerk has researched is presented. The judges discuss the case and raise questions about it which might later be posed to counsel in oral argument.

Court of Appeals: Post-Argument Conference

All three divisions hold post argument conferences. This conference is generally held at the conclusion of all of the oral arguments scheduled for the day. Each case is discussed and tentatively decided. If there is a division of opinion and the judge to whom the case is assigned is in the minority, the case is reassigned to another judge on the panel for preparation of the majority opinion. The form of an unpublished opinion is different than a published one. Thus, to aid the

judge who will write the opinion, a decision is usually made at this conference whether the opinion should be published.

Court of Appeals: Opinion Preparation

After post argument conference, the judge to whom the case is assigned prepares a draft opinion which is submitted to the other judges for comment. If agreement on the form of the opinion cannot be reached, another judge may prepare a separate concurring opinion or a dissenting opinion. Concurring and dissenting opinions are also circulated for comment. The extent to which a law clerk participates in the preparation of an opinion is solely up to the individual judge, but the role of the law clerk in this process is ordinarily minor. When all three of the judges agree on the opinion, or agree to disagree about it, the case is formally decided and the opinion or opinions are filed.

To complete our tracking of the decision making process, let's assume that a petition for rehearing is filed and denied and the losing party files a petition for review with the Supreme Court.

Supreme Court: Petition for Review

Whether or not a petition for review is granted is ordinarily determined by one of the two departments of the Supreme Court, rather than by the Supreme Court en banc. The Chief Justice is a member of both departments. He assigns the other justices to a particular department. These assignments are rarely changed during the term of the Chief Justice. The effect of this is to have relatively permanent departmental composition.

Each petition for review is assigned to a justice who is selected by rotation, except the Chief Justice is ordinarily not assigned any cases. All nine of the justices are given a copy of the petition for review, any answer to the petition, and all of the briefs which were filed in the Court of Appeals. The record of the trial court proceeding is delivered to the law clerk of the assignment justice. The law clerk prepares a memorandum which is given to each justice. As in the Court of Appeals, the law clerk's memorandum does not bear the

stamp of approval of the justice for whom the law clerk works. It is simply a memorandum prepared by the law clerk.

Each department of the Supreme Court meets one Friday a month during each term to consider petitions for review and other matters. The justice assigned to the petition for review delivers an oral presentation of the facts and issues in the petition. If there is a unanimous vote on whether the petition should be granted or denied, the decision of the department becomes the decision of the court. Without unanimity, the petition for review is rescheduled for consideration at the next en banc conference. En banc conferences are also scheduled once a month. A majority of the Justices meeting en banc determine whether the petition for review should be granted.

If a petition for review is granted, oral argument is set before the court en banc. Ordinarily, no additional memorandum is prepared by the assignment justice's law clerk. The Supreme Court does not generally hold conferences to discuss cases in advance of oral argument. Post argument conferences are held at the end of each days oral argument. A tentative disposition of the case is made at that conference. The opinion circulation and filing procedure is essentially the same as in the Court of Appeals. The big difference is that there are nine persons, rather than three, who must reach a decision on each case. The Chief Justice's office has the responsibility to supervise the circulation of opinions and may convene a post-opinion conference to discuss troublesome cases and to encourage decisional action.

Disclaimer

The material in this column is based primarily on discussions with court personnel. It is also based upon a preliminary report of the Washington Appellate Court Project prepared for the Supreme Court by the National Center for State Courts — a report which is preliminary and subject to revision. Information gained from discussions with court personnel is subject to the usual possibilities of misunderstanding associated with verbal communication. No one in the appellate court system has reviewed this article or vouches for the accuracy of it. I invite corrections. □



SUPREME COURT PRACTICE

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

Current Issues Before the Court

43666 — *In re the Estate of Griffen*

Whether a will which makes a bequest to a legatee "and her heirs" entitles the heir of the legatee to the bequest in the event that the legatee predeceases the testatrix?

43677 — *Jansen v. Morris*

Whether a defendant is denied equal protection and due process of law by the action of the Board of Prison Terms and Paroles in ordering mandatory minimum sentences to be served in the same order in which the same offenses arising out of the same transaction when charged in the prosecutor's Information.

43681 — *Hunsley v. Giard, et ux.*

Does the following instruction properly state the law?

If you find the sole proximate cause of the stress . . . was plaintiff's fear for the safety of defendant or the damage to her, plaintiff's home, then you will find for defendant.

However, if you find a proximate cause of the stress was the noise or the scene which confronted plaintiff or the fall and bruises plaintiff sustained, then the verdict shall be for plaintiff.

43683 — *Cammel v. State Farm Mutual*

Are "other insurance" clauses in automobile insurance contracts void as against public policy thus allowing the "stacking" of uninsured motorist protection?

43685 — *State v. Manning et al.*

May evidence obtained as a result of a Special Inquiry Judge hearing held after the charging and arrest of defendants be used in their subsequent criminal trial?

43687 — *Fecht v. Dept. of Social and Health Services*

Is the age requirement of WAC 388-37-210(1) for establishing non-continuing general assistance in excess of the authority granted to the Dept. by RCW 74.08.090? Does the age restriction in WAC 388-37-210(1) rest on a rational basis or is it arbitrary, unreasonable, inequitable and unjust and therefore a violation of this state's privileges and immunities clause and the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution?

43704 — *State v. Kreck*

Whether a written record of the state toxicologist containing test results showing the presence of chloroform found in the blood of decedent is properly admissible under the Business Records Act? RCW 5.45.020.

Whether the Business Records Act as applied to criminal cases is violative of the "right of confrontation" guaranteed by the sixth amendment to the U.S. Constitution.

43705 — *In the Matter of the Examination of the Washington State Bar Assoc.*

(1) Is the State Bar Association a state agency?

(2) Are the financial records and transactions of said agency subject to post-audit by the state auditor?

(3) To what extent is the State Bar Association an agency of the judicial branch of government?

(4) Are the funds of the State Bar Association "public funds"?

(5) May the legislature constitutionally provide post-audits by the state auditor within the judicial branch of government?

43706 — *State v. Hewett*

May a trial court admit the video-taped testimony of a victim in a trial for robbery when the witness's presence at trial would be difficult to obtain?

Whether a search warrant which specifically authorizes the search of described premises and particular persons "found thereon" authorizes the search of a vehicle parked on the street at the curb in front of the house described therein.

SUPERIOR COURT NEWS

By **JEROME M. JOHNSON, Judge**
King County Superior Court

**Seattle Judge Installed
as Chairman of
National Conference
of State Trial Judges**

Superior Court Judge George H. Revelle, Seattle, has been installed as chairman of the American Bar Association's National Conference of State Trial Judges.

Revelle, 62, succeeded Judge James J. Richards, Hammond, Ind., at conclusion of the ABA annual meeting in Montreal August 13.

A native of Seattle, Revelle received LL.B. and J.D. degrees from the University of Washington School of Law. He is also a graduate of the U.S. Army Command and General Staff College.

Revelle entered private practice in Seattle after graduating from law school in 1936. He served as a Seattle municipal judge (pro tem) from 1948 to 1951 and was appointed to the Superior Court bench in 1955. He won election to the post in 1956 and is serving his fifth four-year term.

Among his many civic and social activities, Revelle has served as chairman of the Washington State Board Against Discrimination in Employment.

Revelle is a member of the Washington State and Seattle bar associations, the American Judicature Society and the Institute of Judicial Administration. He has also served on the faculty of the National Trial Judge's College and as a labor grievance arbitrator for the Federal Mediation and Conciliation Service.

He and his wife, Evelyn, have two sons.

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JUDICIAL COUNCIL REPORT

By **DEAN R. SARGENT**
Judicial Council Attorney

For the past year the Council has been studying the new comparative negligence act. Several questions remain unanswered by the act. Among them is the impact on such common law doctrines as last clear chance, assumption of the risk, *res ipsa loquitur*, and the various degrees of negligence including gross negligence, wanton or willful negligence and strict liability. Other areas with which the Council has been concerned are the standard of apportionment of damages, that is should it be based on causation or fault, the use of special verdicts, third party practice, and setoff. The Council has an ad hoc committee which has been meeting regularly to consider proposed amendments to the act and to court rules of procedure. In addition to the subjects already mentioned, the committee is considering a contribution among tortfeasors act.

The Council is also collecting and studying all of the local rules of practice for superior courts. The superior courts have authority to adopt local rules as long as they are not inconsistent with procedural rules promulgated by the Supreme Court. The Council hopes to offer some suggestions to the Supreme Court not only for eliminating any inconsistencies, but for making local rules more easily available to practitioners throughout the state.

After its last meeting in June, the Council forwarded to the Supreme Court several recommendations for amendments to the superior court criminal rules. The Council staff has since undertaken a study of the justice court criminal rules. One purpose of the study is to bring the rules up to date with current case law. Another is to determine the extent to which procedures in the justice courts might be made similar to those in the superior courts in order to reduce the difficulty for practitioners of having to deal with two different sets of rules.

Other subjects which are being studied are the new federal rules of evidence, statutory priorities for calendaring various types of action, and problems relating to conditions placed on the granting of probation.



Legal Services for Handicapped

Attorneys within the State of Washington interested in providing legal services and helpful counsel to disabled and handicapped persons, have been requested by Ivan E. Merrick, President of the Foundation for the Handicapped, to make their interest known to the Foundation.

Incorporated in 1963 as a Washington non-profit corporation organization, primarily to serve orphaned and abandoned handicapped persons located in state residential institutions, the Foundation's program has now broadened to meet the concern of parents, relatives and guardians who have responsibility for lifetime planning for their handicapped children or wards.

The June 1975 issue of the *Washington Bar News* (page 38) contained a short article on the services of the Trust and Investment Committee. By reason of the leadership of the late Harold A. Rogers, President of the Peoples National Bank of Washington, and parent of a handicapped son, in establishing this committee and recruiting the trust officers representing six statewide banks as members, the committee has now been formally designated as the Harold A. Rogers Memorial Trust and Investment Committee of the Foundation for the Handicapped.

In addition to the trust officers, four lawyers serve on this committee which endeavors to provide attorneys and trust departments with information on the services of the Foundation as

a fiduciary, and suggested forms for revocable and irrevocable trusts wherein handicapped persons are beneficiaries. It is pointed out that the Foundation can serve as a trustee if the recipient of some portion of the remainder interest.

The Family Counseling Committee has as its primary responsibility the providing of counsel to parents and relatives of handicapped individuals on matters of estate planning, wills and trusts, and in addition the supplying of information on resources that will meet the immediate needs of the individual. In carrying out its assignment, the assistance of attorneys across the state is particularly needed.

To provide long-term personal interest and support on behalf of the one who is disabled or handicapped, a Committee for Personalized Services headed by Ralph Munro, Special Assistant to the Governor, has been activated.

The late Dr. Garrett Heyns, Director of Institutions of Washington State, can be credited with organizing the Foundation on which he served as a member of its Board of Directors until his death. Recognizing the need of citizen interest in the sizeable number in state institutions who were orphaned or had been neglected or abandoned by relatives, he suggested a program of birthday and holiday remembrances that is still carried on. Also, he was aware that parents cannot indefinitely continue their supportive supervisory role and that the handicapped adult must either receive this help from a private citizen organiza-

tion or become wholly dependent on tax supported agencies and institutions.

John H. Hauberg, Seattle, was recruited by Dr. Heyns to serve as president, and served in this capacity for the first eight years of the Foundation's existence.

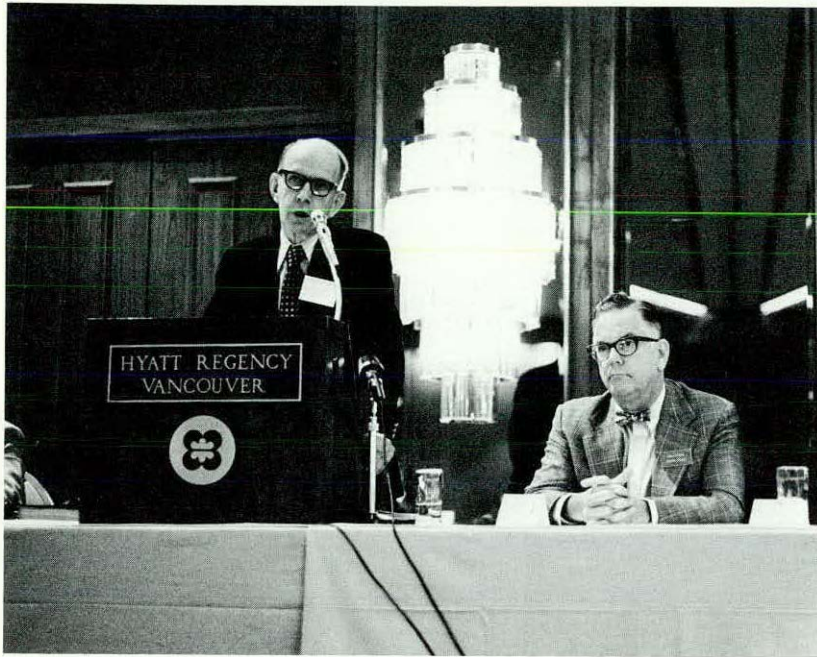
Lawyers now serving on the Board of Directors of the Foundation, in addition to President Ivan Merrick, are Van R. Hinkle, Executive Vice President, Mercer Island; William F. Nielsen, Vice President, Spokane; Honorable David C. Hunter and Frank J. Eberharter, Judges of the Superior Court; Maurice C. Clark, Secretary, Seattle; John H. Chapman, Seattle; Wm. L. E. Dussault, Seattle; William H. Ellis, Seattle; Robert F. Garing, Seattle; Bradford M. Gierke, Tacoma; Richard Golze, Seattle; Paul Layton, Seattle; and Yancey Reser, Walla Walla.

A statewide cadre of attorneys to provide counsel, support and in many cases on-going friendship to handicapped citizens is currently a major need of the Foundation.

Further information on the Foundation and its services can be obtained by contacting its executive director, James M. Weir, at 4409 Interlake Ave., No., Seattle, WA 98103, tel. 633-2003.

Treatment Versus Punishment Conference

The issues under debate between Judge Horowitz and Prosecutor Bayley will be the sub-



At the Convention...Tom Malott, Spokane, and Dick Riddell, Seattle

ject of a major conference December 18 and 19. The King County Prosecuting Attorney's Office in cooperation with the Department of Social and Health Services will sponsor a conference on the issue of treatment versus punishment for criminal offenders. This debate has received widespread national attention, and many of the most influential figures in the national debate will be speaking at the conference. Speakers include Robert Martinson, author of a work surveying the studies done on correctional treatment over a period of 20 years, which is perhaps the single most influential indictment of the age of treatment; Dean of Chicago Law School, Norval Morris, who has outlined a new model of sentencing and corrections in his book *The Future of Imprisonment*; and Marvin Wolfgang, one of America's leading criminologists.

The conference will deal with the issues of discretion in case disposition and sentencing, prison reform, and the efficacy of rehabilitation programs. The conference is sponsored in part by a grant from the Washington Commission for the Humanities. Admission is complimentary and we encourage members of the Washington State Bar to attend.

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Young Lawyers' Section, Seattle-King County Bar Association Elects Trustee, Announces Plebiscite Results

At the October 6, 1975 meeting, the trustees of the Young Lawyers' Section of the Seattle-King County Bar Association elected Seth Armstrong to succeed David Kenyon as trustee. Mr. Kenyon has decided to leave Seattle, thus creating a vacancy on the Board. According to the Section's bylaws, Mr. Armstrong will serve until the next annual meeting of the Section. Mr. Armstrong had been the first runner up in the most recent election for trustee to the Board. A spokesman for the trustee indicated that both Mr. Armstrong and Ted Willhite, the only other nominee for the position, were both extremely well qualified by virtue of their outstanding service to the Section.

At the same meeting the results of the Board's plebiscite dealing with Initiative 316 were announced. Initiative 316 would reinstitute the death penalty in the State of Washington. The plebiscite sought the views of the membership of the Section on two questions: (1) Whether or not the Board should take any public position on the question; and (2) if so, whether the Board should support or oppose Initiative 316.

Three hundred and three ballots were received. Of these, 211 favored taking a public position and 215 voted to oppose Initiative 316.

Recovery for Wrongful Death Seminar

Written materials pertaining to the "Recovery for Wrongful Death" seminar presented by the Trial Practice Section at the State Bar Convention are now available at the Bar Office. To request these materials, either call or write to Cassie Morris, Administrator of Sections at the Bar Office.

The outlines available are written by seminar speakers, Craig P. Campbell of Seattle, General Review of Washington Death Statutes; Garfield R. Jeffers of Wenatchee, Beneficiaries of Damages Awarded for Wrongful Death; and Shannon Stafford of Seattle, Damages for Wrongful Death.

In Memoriam

Stephen F. Chadwick, 81, of Seattle, died August 28. He was admitted to the Bar in 1915.

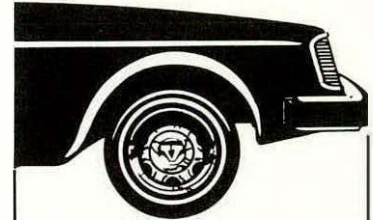
Daniel Walter Gaiser, 68, of Spokane, died September 10. He was admitted to the Bar in 1939.

Roy C. Mitchell, 55, of Bellevue, died October 20. He was admitted to the Bar in 1951.

Hon. Charles L. Powell, 73, died August 17. He was admitted to the Bar in 1925.

Discipline Action on Fraser

William H. Fraser, Breerton, was disbarred from the practice of law on October 20, 1975.



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AG Opinions

AGO No. 6 Taxation — County — Real Estate Excise Tax — Applicability to Certain Bank Divestiture Transactions.

(1) The conveyance by a national bank of certain of its banking premises constitutes a "sale" within the meaning of RCW 28A.45.010 under the following circumstances: (a) the purpose for the conveyance is compliance with a directive from the Comptroller of the Currency pursuant to 12 U.S.C. 371d; (b) simultaneously with the conveyance the new owner of the property leases it back to the bank under a lease agreement which allows the bank to repurchase the premises at any time during the term of the lease; and (c) the bank is required, under the same lease agreement, to repurchase the premises in any event upon expiration of the term of the lease.

(2) Under these same circumstances, the agreement for a lease-back with option to purchase is also a "sale" within the meaning of RCW 28A.45.010.

AGO No. 7 Community Colleges — Employees — Labor — Legality of Agency Shop Clause Covering Community College Academic Employees.

The board of trustees of a community college district may not legally include what is commonly referred to as an "agency shop" clause in a negotiated agreement entered into between such board and the faculty employees of the district under the provisions of chapter 28B.52 RCW for the reason that such a clause is prohibited by RCW 28B.52.070.

AGO No. 8 Districts — Schools — Director Districts — Boundaries — Voluntary Change of Residence from One Director District to Another — Vacancy.

In a school district which has been divided into school director districts under RCW 28A.57.050, a school director's voluntary change of his place of residence and voting registration from one director district to another within the school district disqualifies him from continuing to serve for the remainder of the term for which he was elected because of the continuing qualification provisions now contained in RCW 28A.57.318.

AGO No. 9 Labor — Contracts — Public Works — Standards for Determining Wage — Fringe Benefits.

The requirement of chapter 39.12 RCW that the "prevailing rate of wage" be paid to laborers, workmen or mechanics upon all public works of the state, or any county, municipality, or political subdivision, does not necessitate that such persons employed subject to its provisions be provided with actual "bona fide fringe benefit programs" so long as wages are paid in an amount which includes the prevailing costs of such programs as are identified in RCW 39.12.010.



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AGO No. 10 Offices and Officers — State — Thermal Power Plant Site Evaluation Council — Department of Natural Resources — Governor — Certification of Thermal Power Plant Sites.

A certification, approved by the governor under chapter 80.50 RCW, may authorize the withdrawal of such public waters as are required for use in the operation of a thermal power plant.

AGO No. 11 Taxation — Real Property — Liens — Acquisition of Taxable Real Property by United States Agency.

Where a United States agency acquires real property by outright purchase, ad valorem property taxes levied against such property which are due and payable in the year of acquisition, together with the lien for such taxes, are to be prorated and allocated to that portion of the year prior to the date of execution of the instrument vesting title in the United States.

AGO No. 12 Taxation — Property — Plats and Subdivisions — Deposit for Anticipated Property Taxes.

RCW 58.08.040 does not require the payment of a deposit for anticipated property taxes upon the filing, pursuant to regulations adopted under RCW 58.17.060, of a "short plat" subsequent to May 31 in any year and prior to the date of collection of the taxes.

AGO No. 13 Offices and Officers — County — Commissioners — Funds — Districts — Schools — Distribution of Federal Forest Funds to Joint School Districts.

A board of county commissioners receiving federal forest funds under RCW 36.33.110 is not authorized or directed by that or any other statute to distribute any portion of those funds to a joint school district belonging to another county but lying partially within the county receiving the funds.

AGLO No. 37 Airports — Leases — Legality of Construction of Public Airport on Leasehold Property.

It would be illegal for the state to expend funds for capital improvements on real property in which it merely holds a leasehold interest unless it is entitled to (and physically able to) remove the improvements from the property upon the termination of the lease, or, alternatively, unless the value of the improvements as they will pass to the lessor are fully amortized in the computation of the rental obligations of the lessee. □



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TAXATION

By MALCOLM D. KATZ

In two very recent Revenue Rulings, Rev. Rul. 75-230 and 75-232, the IRS has attempted to clarify the law with regard to the taxation of monies received for a settlement of a personal injury suit. In the first Revenue Ruling, the IRS held that medical expenses incurred and deducted on the plaintiff's return in a year prior to such a settlement will be presumed to have been recovered first out of the settlement proceeds, in the absence of an express allocation to such expenses in the settlement agreement, and are therefore includable in the gross income in the year of receipt to the extent allowed in the prior taxable year. An express allocation to previously deducted medical expenses, however, will be presumed correct, unless unreasonable, and only that amount will be treated as reimbursement.

The IRS illustrated the operation of this rule by a situation in which a taxpayer-plaintiff paid \$5 for medical expense attributable to the accident, sued for \$100 without stating what portion was claimed for medical expenses or the damages sought for pain and suffering, and later on, settled for \$20 without any allocation in the settlement between the previously paid medical expenses and pain and suffering. The ruling holds that \$5 of the \$20 received is taxable income, even though the case may have been settled on a 20% across-the-board basis. The absence of a specific allocation in the settlement agreement, in other words, was held by the IRS to justify a holding that the amount of the taxpayer's previously paid medical expenses was the best evidence available on which to base an allocation.

In the second Revenue Ruling, the IRS held that insofar as an amount received for future medical expenses which the plaintiff would have to incur, these payments were excludable from plaintiff's gross income and that no deduction was allowable in future years, up to the amount of money received for future medical expenses. To the extent, however, that the plaintiff incurred medical expenses in future periods over and above those received at the time of the settlement and attributable to future medical expenses, the

excess was held to be deductible in the years paid, even though the source for these later payments may have come from prior monies received for pain and suffering. In other words, the portion of the settlement specifically allocated to future medical expenses must be totally offset against those future expenses, before any medical payments attributable to the injury sued for are deductible under Section 213 of the Internal Revenue Code.

Taken together, these two Revenue Rulings place a rather high premium on allocating an amount received — whether by settlement or as a result of a judgment — to those items which from a tax standpoint will maximize the plaintiff's recovery. The Revenue Rulings, and particularly the first one, also suggest that they are rather limited in their application to personal injury actions in which the amount of actual damages is a sum certain, rather than to a situation, such as in a libel suit, where the IRS has held that the breakdown of the award should be based upon the relative percentages of the amounts of compensatory and exemplary damages alleged in the complaint. Finally, and most importantly, the second Revenue Ruling extends the previously well accepted doctrine of excludability for pain and suffering to amounts received for future medical expenses, so long as no deduction is taken for them in the years paid.

YOUNG LAWYERS

By LARRY BAILEY

Meeting — October 18, 1975

1. Members Present: Larry Bailey, Betty Bracelin, Bill Burns, Dick Beresford, Steve Brown, Judy Zuberbuhler, Ken Rice, Tim Fishel, John Hall and Phil Brandt.

2. Introduction of New Board Member: Phil Brandt, the new representative of the Sixth District was welcomed. He is replacing John Barline who has resigned.

3. Notes from Board of Governors Meeting: Larry Bailey discussed the program at the Board of Governors meeting. Topics discussed

were malpractice, results of the Bar exam, the judicial article, the terms of the Board of Governors, legal malpractice insurance, the recent Bar exam, and the location of the next annual meeting. As a result of the discussions, a motion was proposed and carried to have the chairperson recommend to the Board of Governors to take a position or vote against the judicial article. Also it was moved and carried to recommend that the multi-state bar examination requirement be dropped. On the latter matter it was felt that we could contact the recent admittees for input and that this would provide an excellent vehicle to reach the new admittees and show them that the Young Lawyers were engaging in useful work in their behalf.

4. **Meeting Dates:** All meetings in Seattle were proposed to be conducted at Larry Bailey's office. Meetings were proposed for November 15th in Seattle at 9:30 a.m.; December 20th in Seattle at 9:30 a.m.; January 10th in Seattle at 9:30 a.m.; February 7th in Seattle at 9:30 a.m.; March 6th in Olympia at 9:30 a.m.; April 10th in Tacoma at 9:30 a.m.; May 8th in Spokane at

9:30 a.m. and discussion was postponed for the June and July meetings until later. The locations of the meetings in Olympia, Tacoma and Spokane would also be announced later.

5. **Young Lawyers Section Affiliates Meeting:** It was announced that the YLS of the ABA was conducting an affiliates regional workshop. The advantages and disadvantages of participating in the workshop were covered and it was moved and carried to pay the air fare for one member of each of three affiliates estimated to be at \$130.00 each. The room would be picked up by the ABAYLS. Also it was decided that up to three members of the Board would be able to participate with a preference to the chairman or the chairman elect. Final decision on the participation of the Board members was delayed to the next meeting.

6. **Bill Ide Meeting:** It was announced that on November 13 or 14 and probably the 14th, the President of the American Bar Association Young Lawyers Section would be in Seattle and after some discussion it was decided we would attempt to have a dinner gathering at 8:00 p.m.



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on Friday, the 14th, so that we could become acquainted with Mr. Ide.

7. **Newsletter:** Tim Fishel briefly reported that the newsletter was at the press and we should expect our copies as soon as mailing could be accomplished. I believe it was announced that 2,000 copies would be printed so that there would be adequate complimentary copies to pass around.

8. **New Admittees Reception:** Larry Bailey announced that the State Bar has assigned Young Lawyers Section the task of overseeing the new admittees reception in the Olympic Hotel on October 28th.

9. **Clinical Education Program:** Seth Armstrong, the clinical education chairman, was unable to attend, however, the target date has been set for the 28th and 29th of November with the use of the King County Courthouse facilities. The fee would be \$30.00 per registrant and the Board reviewed its commitment to underwrite

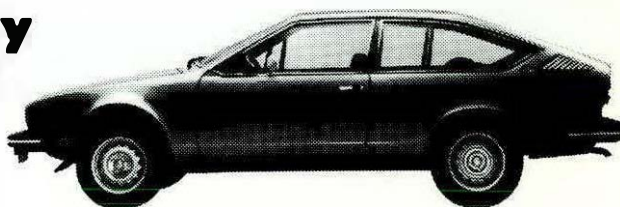
this program up to \$3,000.00.

10. **Law Panels:** Tim Fishel was assigned the responsibility to oversee the UPS law panel with Phil Brandt's assistance. It was announced that the panel would be conducted in Room 3, on the 21st of November, from 2:30 to 5:15 p.m. It was suggested that January 16th or 23rd be targeted for Gonzaga Law Panel and that Dan O'Rourke investigate this possibility. A U of W law panel for the 14th of November was also suggested and Judy Zuberbuhler will look into this possibility and make any necessary coordinations.

11. **Washington Lawyer's Section:** A long discussion regarding the Washington Lawyer's Section resulted in the apparent division of the Board on whether to support it. Betty Bracelin was assigned the task of preparing comments to be transmitted to Larry Bailey which could be taken to the next Board of Governors meeting. Input to Betty Bracelin should be no later than the 27th of October.

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Estate Liquidation By Closed Bid Auction

The senior partner of an outstanding law firm in upstate New York, which has the distinction of operating with the ratio of 3 lawyers to 30 supporting staff, a main office and 7 satellites, complained that they had a major problem in liquidating personal assets of the decedent. The conventional auction has not proved satisfactory because people have to wait around all day for a specific item and even then they occasionally miss it and have a feeling that the auctioneer is favoring an accomplice in the crowd.

I suggested to him that with his supporting staff he could very well adopt a system which we have used so successfully for the last several years. We have named it a "Closed Bid Auction" and I will describe it in some detail. To start with, we set the sale for Saturday and on the preceeding Sunday and several times during the week including Friday night and Saturday morning of the sale, we run an ad of which the following is a sample under miscellaneous for sale:

ESTATE SALE: Closed bid auction: 1970 ¾ ton GM custom camper Pickup 37,439 miles, Gem top canopy; 14 ft. Hewes Craft Aluminum fishing boat; 9.6 HP Sea King outboard motor, Calkins Trailer; gas mower, gas snow blower; 10 inch Radial Arm saw; other power tools; upright freezer; camping gear; washers, maple breakfast set; refrigerator; 4 band Hallicrafters radio; 22 caliber Ruger solid frame revolver; bedroom and living room furniture. Saturday, March 8, 1975, 10:00 A.M. to 6:00 P.M.

In this case, we also ran a shorter verion of the ad under automobiles for the pickup truck and under boats for the boat, motor and trailer only.

While we advertise opening the sale at 10:00 A.M., we have learned to open an hour early to allow the dealers to come through. This clears the decks for the rest of the people. On this sale, we had 500 people through the house. We have a staff of 3 on duty and 4 at some times during the day for noontime relief to bring the sandwiches. One is at the front door with a card table and a tray designed for 3"×5" cards with 300 number tabs in the tray. The inexpensive gray cardboard trays are

adequate. In addition to the tray there is a rubber stamp and a supply of pre-cut scrap paper for bids. An example of the rubber stamp and bid form is as follows:

NAME _____
 ADDRESS _____
 PHONE _____
 Article No. _____
 Descrip. _____
 BID _____

Every item in the house has a number on it. With a legal tablet our Probate Administrator has gone through, numbered and described each item and has a general inventory with two columns on the right and one column on the left. The left-hand column states which room the item is in, the right-hand column states the top bid which is later determined, and the name of the successful purchaser. A sample of this portion of inventory is as follows:

	Inventory	top bid	name
Living room	1. plaid chair with wooden base	51.60	
	2. lamp tree	20.00	
	3. end table	20.00	
	4. brass lamp	20.50	

The potential purchasers go through the house, mark down their bids and deliver them for filing in the filing tray. They frequently come back two or three times and raise their own bids. We never bother to remove the old bids, but simply accumulate them. Many people make 6 to 12 individual item bids. At 6:00 P.M., we lock up the house, have dinner and return to the conference room at the office, where the bids are sorted with the top bids on top of each pile and stapled together for each item. We then get on the telephone and call the successful bidders advising them to pick up their items the next day, Sunday. By the end of the day, most items are gone and what few items remain, we make special arrangements for pickup at a later date.

If any bidder declines to pick up the item, we simply mark off his bid and go to the next one down so that we always clean house.

The buyers have tended to repeat, some of them telling us that they have been at four or five of our sales and they are very happy with the system because they can go out and price an item at



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Montgomery Wards such as a table saw or bring back a relative to confirm their judgment on the bid or in the case of the sale advertised here, one man brought his mechanic to check over the truck.

We furnish the Clerk with several duplicate money receipt books so that anyone picking up an item receives a receipt for payment and we have a duplicate in the book. We then retain all bid slips and receipt books for auditing, in case anyone raises any questions. In one case, the contents of an old house were appraised for \$500 and we sold the contents for \$4,500 on our closed bid auction sale. One heir brought a lawyer all the way from Texas to investigate our procedure and when she saw all the supporting material, she immediately suggested that the client go through the mass of material if she wished but as far as she was concerned, it was the finest system that she had ever seen.

Our office charges 20% of the gross for handling the sales and we absorb the advertising cost. Our experience is that this adequately covers the time and a half which we pay those members of our staff who work the detail, and any helpers they may hire on the outside at straight time and also covers the supervising time of the responsible attorney who drops in in the morning, at noon and in the evening and is around on Sunday in case there are any problems.

My experience is that the Trust Companies, when they are Personal Representative, insist on calling in a dealer and we feel that we realize from two to three times as much net from our closed bid auction sales as they do.

Our local ordinances in Spokane provide that no license is required for estate sales. Every lawyer would, of course, have to check out the ordinances in his jurisdiction on this point.

One final word of warning. On one sale, we had a break-in that evening and several items were stolen. I have since bought a portable burglar alarm from Sears for \$48.00 which I move in for the sale and then take home to protect my own house.

Prepared by the Office Practice Committee, Harry E. Hennessey, Editor, Spokane, Washington.

This column is a clearing house for better ways to run the law office. Contributions are solicited from all members of the Bar and should be sent to the editor at Post Office Box 324, Spokane, Washington 99210.



For Sale: Moore's Federal Practice 2d edition, with Benders Forms; Rabkin & Johnson's Current Legal Forms with Tax Analysis; Federal Reporter 1st series Volumes 200-300; Federal Reporter 2d series (entire set). All sets complete and up-to-date. Prices negotiable. Miriam Schwartz, 292-1144, Seattle.

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- Dec. 4-5 CLE Seminar, Trial Advocacy II, Olympia/Tyee Motor Inn.
- Dec. 11-12 CLE Seminar, Trial Advocacy II, Seattle/Olympic Hotel, Meeting Grand Ballroom, Lunch, Spanish, Lounge.
- Jan. 9 CLE Seminar, Developments in Local Government Law, Edward A. Rauscher, Spokane/Ridpath Hotel, Empire Ballroom A.
- Jan. 16 CLE Seminar, Developments in Local Government Law, Olympia/Greenwood Inn.
- Jan. 16 CLE Seminar, Coping With the New Regulatory Maze: Recent Federal Credit Laws and Regulations, J. C. (Pete) Middlebrooks, Seattle/Olympic Hotel, Grand Ballroom.
- Jan. 23 CLE Seminar, Developments in Local Government Law, Seattle/Olympic Hotel, Grand Ballroom.
- Jan. 30 CLE Seminar, Construction Contracts: Problems of Performance and Liens, Robert B. Leslie, Olympia/Greenwood Inn.
- Feb. 6 CLE Seminar, Construction Contracts, Seattle/Olympic Hotel, Grand Ballroom.
- Feb. 13 CLE Seminar, Workmen's Compensation/Longshore Act, Harry Margolis, Seattle/Olympic Hotel, Grand Ballroom.
- Feb. 20 CLE Seminar, Construction Contracts, Spokane/Ridpath Motor Inn, Empire Ballroom A.
- Feb. 27 CLE Seminar, Workmen's Compensation/Longshore Act, Olympia/Tyee Motor Inn.

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