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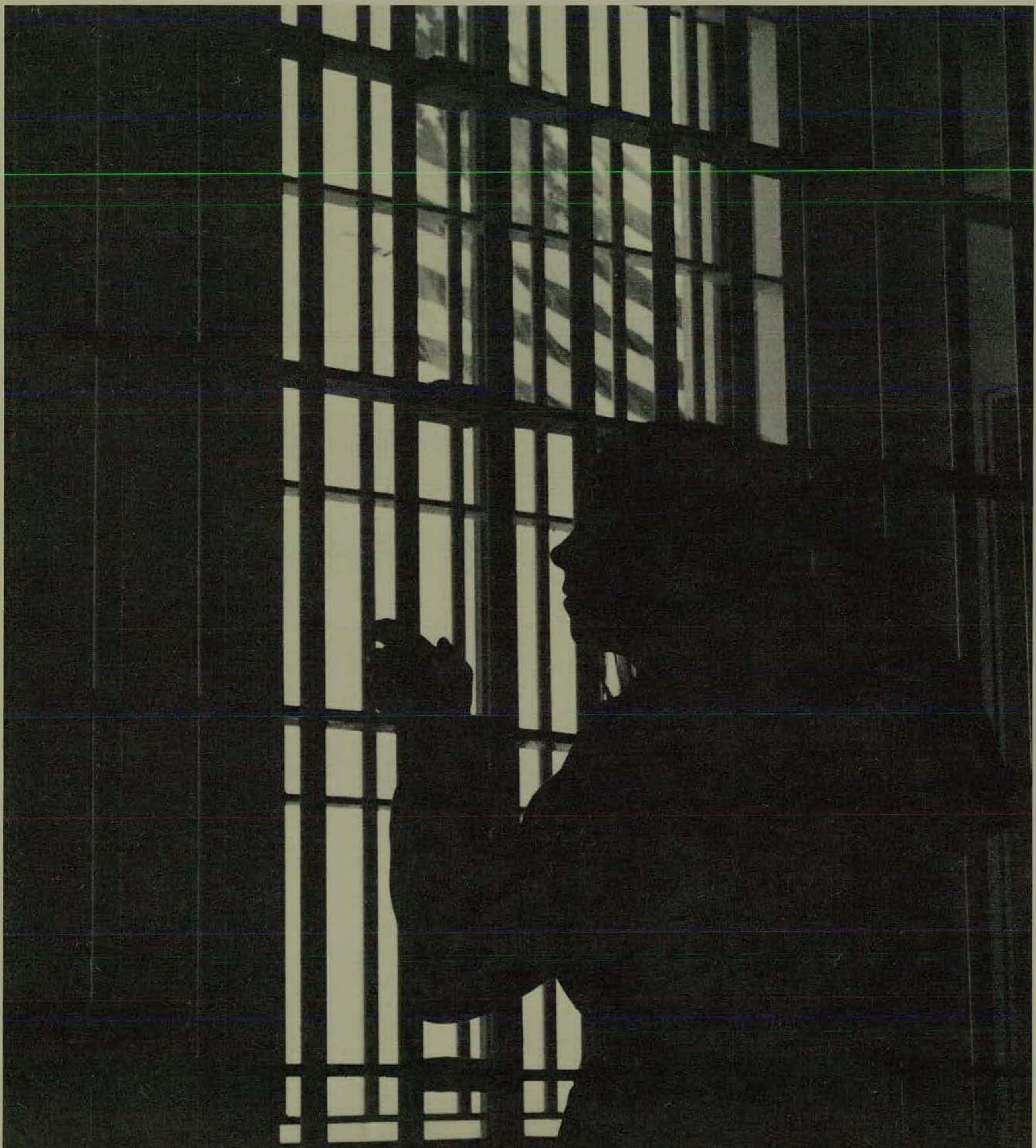
WASHINGTON STATE BAR NEWS



JAILS—HOPE FOR THE FUTURE

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Volume 30, Number 3
March, 1976

WASHINGTON STATE BAR NEWS

FEATURES

IN THE NEWS

DEPARTMENTS

March cover photo by Kathleen Quinn, Everett

Fees Threaten Effect of WLS

Editor:

I have reviewed the Washington Lawyers Service materials which have been sent to all attorneys in the state describing the prepaid legal services program, and I strongly feel the need to extend equal protection of the law to the moderate and middle income groups to which the plan is directed. However, it is evident that there are a number of serious problems with the proposed fee and organizational structure of the program which threaten its potential effectiveness.

Control of the Washington Lawyers Service under the plan is placed in a 13 member board, a minority of whom are lawyers. Although the decision to place the control of the corporation in non-lawyers is a tenable one, the plan goes on to provide that the "panel lawyers, as a group, will have to accept the risk of excessive claims experience or utilization." The plan further provides that "a percentage of the fees payable will be withheld . . . to establish a contingency reserve." Nowhere is this percentage specified, and the plan specifically states that fees can be withheld in such amount "as WLS may deem necessary . . . for underwriting reserves or other purposes."

The plan therefore provides for a corporation to be controlled by non-lawyers, while it places the risk of mismanagement on the lawyers. Although fees under the program are limited and the lawyers do not share in any profits, they continually bear the risk of loss through receiving less than the limited fee specified in the plan.

I believe the corporation should either be controlled by lawyers who would therefore properly bear the risk of loss as well as the benefits of success, or the program should be controlled by non-lawyers and should stand on its own feet and honor its limited fee obligations to its lawyer participants. To do otherwise is to create responsibility where there is no authority.

As to the proposed fee schedule, while most of the fees seem reasonable and appropriate for such a plan, in at least three areas – probate, administrative hearings and domestic relations – there are serious problems and a need for revisions.

Specifically as to probate, in providing for a fee of $35.00 per hour or 2.5% of the value of estate assets, whichever is the lesser, the plan would pay an attorney handling the necessary probate of an estate whose primary asset is real estate with an equity of $2,000.00 a total fee of $50.00. If the equity were $1,000.00, while probate would be just as necessary, the total fee for complete probate would be $25.00. A more appropriate fee under the plan would be $35.00 per hour or 2.5% of the value of assets, whichever is the greater.

As to administrative hearings, the plan calls for a total fee of $70.00 for the appearance of a lawyer before any municipal, state or federal administrative agency. This fee would include all services in appearing at a hearing in a social security disability case for example, which often involves all of the elements of a trial including the presentation of witnesses and submission of legal briefs. Because the scope and variety of administrative hearings is so large, I think a blanket fee is impractical, and that the fees for such services should be at the hourly rate of $35.00 per hour on a time basis.

For a dissolution of marriage action, the fee for all legal services "where the final disposition is legal separation only or action dropped by petitioner" is $150.00. This fee would therefore apply to the case where the parties reconcile on the morning of a highly contested trial involving valuable domestic property, where the normal fee would be well over $1,000.00. No distinction is made between the case which is abandoned after the preparation of the initial petition and that which is abandoned after months of negotiation and trial preparation.

The full fee for an annulment action is $250.00, regardless of whether the matter is contested and regardless of the amount of property involved, or the stage at which the matter is resolved, including trial. Similarly, the fee for an uncontested dissolution is $300.00, even though the assets of the parties may be $100,000.00 and the considerations necessary for arriving at a property settlement may be exceedingly complex. The maximum fee for a contested dissolution is $500.00, again without distinction between the valuable asset case and the case where the assets are nominal.

Because of the problems with the plan as currently proposed, I am unaware of any lawyers in my own county who have agreed to participate in the panel, despite their degree of sympathy for the purposes of the plan.

I would like to see the plan succeed and I hope that the fee schedule and organizational structure will be revised so as to make the service fair to all concerned by making responsibility commensurate with authority and compensation commensurate with services rendered.

DANIEL N. CLARK
Walla Walla

Audits or Insurance – Not Both

Editor:

It seems to me that one way we can approach the client security problem is through a combination of complimentary approaches. For those attorneys who can furnish the Bar Association with a certificate of malpractice insurance currently in force, no spot audits should be required or needed. For those who cannot, perhaps they could be assessed the costs and subject to spot audit requirements. That might be a viable approach both in answer to the audits and compulsory malpractice.

Yet it might still be arguable that some clients could object to an independent audit of their trust accounts with attorneys. I have not considered this nor any methods to safeguard such confidentiality where it might be requested.

EDWARD D. CAMPBELL
Seattle

No Credit for Dissenters

Editor:

I was shocked to hear some time ago that Washington Supreme Court Justices were in effect "penalized" by their brethren for writing dissenting opinions, and "rewarded" for writing majority opinions.

That this is so seems confirmed by the following recommendations of the National Center for State Courts, in its Final Report on the Washington Appellate Courts Project, p. 13 (Nov. 1975):

13. Credit System.
The Washington Supreme Court should abandon its present system of awarding credits in connection with the number of opinions produced per term.

14. Case Assignments.
Justices should be assigned an equal number of opinions per term. Because of the preparation work involved, no credit should be subtracted for "losing" a case nor should one be awarded for writing a dissenting or concurring opinion which eventually is adopted as a majority opinion.

I believe the bar should endorse without qualification both of the above recommendations. Attorneys and clients alike deserve the independent, individual judgment of each justice in each case disposed of by the court. If the result is more disagreement among the justices, so be it.

Each justice has been elected (or appointed) to exercise his own judgment. We all suffer if a justice is deterred from doing so for fear that his position will be a minority one, and therefore will not receive work-load "credit."

JOHN D. ALKIRE
Seattle

Nobody Listens to the Members

Editor:

Since the proposed spot audit rule is still very much in the news, I am submitting to you a copy of a letter I have presented to the Office Practice Committee in Seattle, Washington along with cover letters I sent to Robert S. Day and John Heath which enclosed a copy of the correspondence to the Committee. As a young lawyer, I attempted to exercise my franchise and offer some alternative suggestions to the rather disturbing proposed text to the spot audit rule. Regardless of the merits of the alternatives suggested by myself, I find it somewhat disturbing that I have yet to hear word one from the Office Practice Committee, John Heath or Robert S. Day regarding receipt or consideration of the correspondence. This failure on the part of these various functionaries is aggravated, in my mind, by the fact that I initially took the time to pen my thoughts at their invitation (see general letter of Ken Short, dated July 2, 1975, circulated to all members of the Bar Association).

One would think that a constituent member of the Bar Association would be at least entitled to a form letter.

BRYAN P. HARNETIAUX
Spokane

Editor's Notes

Tribute to Justice Robert C. Finley

A quarter century of judicial scholarship was commemorated by hundreds of judges, state officials, and members of the bar who united in Olympia on February 13, 1976, to honor Washington State Supreme Court Justice Robert C. Finley. Beneath the jocund chronicling rendered in the sprightly, scintilating banter of Justice Robert F. Brachtenbach, the legal assembly expressed a glowing, panegyrical homage.

A singularly astute and sagacious force on this State's highest judicial body, Justice Finley has championed the frequent triumph of common sense within a "Temple of Technicalities" (as he is wont to waggishly jibe). His unique achievements as a paramount jurist are harvested from the flame of his pen, and the annals of juridic retrospection trace the recurrence of broiling dissents transformed into United States Supreme Court majority opinions.

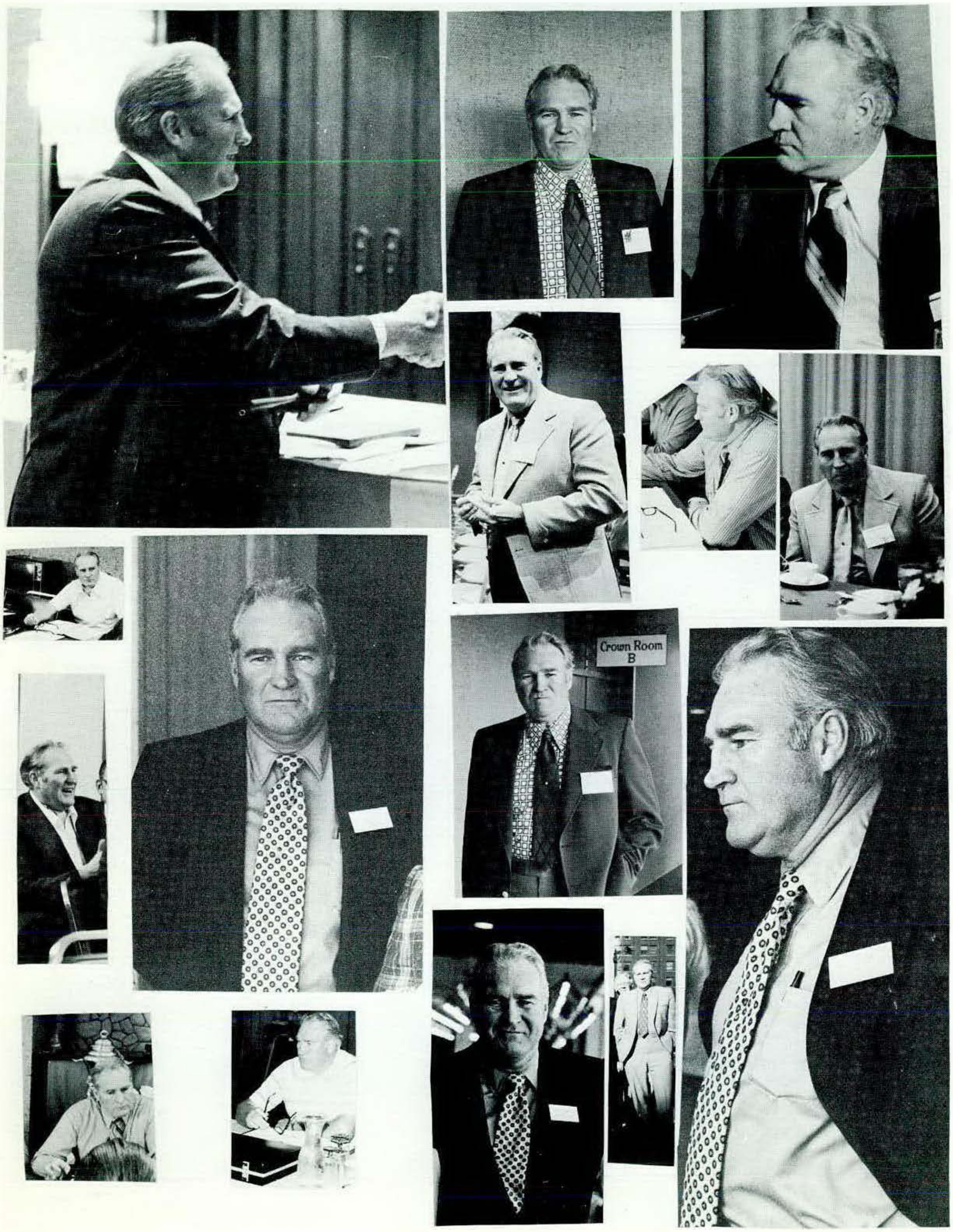
In this atmosphere of laudatory reverence, the February 13th aggregation honored Justice Finley's effectiveness in resolving previous antagonism among Bench, Bar and Press; they acclaimed his "no nonsense"/"gut-level" seriousness, and his devotion to reaching the heart and substance of each matter brought before the Tribunal, despite those petty obstacles and detours which line the avenue to justice. This was the silver anniversary of untiring wisdom.

And, in a humble response of thanks, the legendary licorice-stick appeared from nowhere, wafting the finest damned accounting of "Melancholy Baby" that has ever caressed the beaten ears of this simple critic.

42 days later he is gone.

Keith L. Kessler

Robert Day at Work and Play



Punishment Before Trial

By **Thomas B. Russell**

The County and City jail has gone through a series of evolutions since its birth in our Anglo-Saxon history in the medieval period of the tenth century. At its outset imprisonment was viewed by Pollack and Maitland as "... a sign of advancing civilization." Of course, this was in contrast to the jail's predecessors such as capital punishment for minor offenses, outlawry and maiming. But even in those days there were those who saw this change as useless and much too mild.

Ten centuries later, in Washington State, the County jail has also undergone a transformation since its relatively recent birth in the 1890-1909 era. In those times counties were authorized to build and operate "jails, workhouses, workshops, stockades and other places of detention and confinement." They were to house those who could not make bail, those convicted of misdemeanors serving up to three months and those rare gross misdemeanants who could serve up to one year. Our county and city jails for the most part were built in those times for those purposes with the cells coming from a Montana penitentiary's surplus stock or from a Southern outfit that built a national pre-fab unit. The Montana penitentiary now has a standing request for the return of its units to put them in a museum of history on the prison grounds.

Since those days the county and city jails in Washington and other states have continued to serve their traditional purpose – a home for those of any charge unable to raise bail and a prison for those convicted of misdemeanors, destined to reside there for a few months. But in addition, in our state, like the others, they are

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Thomas B. Russell is an Assistant United States Attorney for the Western District of Washington. After graduating from Stanford Law School in 1964, he served as a Deputy Prosecutor for King County and was a partner in a private law firm before being elected Judge of the North-East District Court in King County. At the conclusion of the term he was appointed to his present position by the Attorney General of the United States.

In 1972-73, Mr. Russell started a program of education for the National College of the State Judiciary in Reno which provided training for over 1500 trial judges. In the process he visited 29 states discussing with judges and administrators their court operations and the art of judging.

In October, Mr. Russell drove 2000 miles back and forth across the state touring county and city jails on behalf of the Department of Justice.

now being used to incarcerate convicted felons for longer periods as a term of probation in lieu of a state prison term. Therein lies the rub for most of what follows.

Constitutional Rights Continue to Exist

Most lawyers recognize that the traditional rule for state prison inmates, that those who passed through the front gate lost all their rights of citizenship, voting, due process, etc., was reversed by the U.S. Supreme Court some time ago and that the elaborations of that reversal in terms of freedoms of speech, religious exercise and due process continue to this day as will any evolving new doctrine.

What is a recent and still obscure development is the application of those reversal vibrations to the confinement of county jail inmates. Judicial decision after judicial decision has applied the Eighth Amendment ban on cruel and unusual punishment as well as the Fourteenth Amendment ban on loss of liberty without due process of law to persons serving time for misdemeanors and felonies in county and city jails.

How this comes to be in evolving constitutional law is best left to the authors and what follows is a collage of Federal judges' opinions in the pioneer cases in this field.

The Constitution does not stop at the gate of the prison . . . There are certain minimum standards below which today's society cannot sink in its treatment of those of its members who must, for one reason or another, be confined in jails and prisons. Those minimums must be read within the constitutional setting of 1972 not that of 1789 . . . The Eighth Amendment must draw its meaning from evolving standards of decency that mark the progress of a maturing society. . . It is almost impossible to say anything about the national shame of America's prisons that has not been said before and we shall not try. The final report of the 42nd American Assembly, . . . stated among other things:

> Most correctional institutions are and can be no more than mere warehouses that degrade and brutalize their human baggage . . . Local jails are even worse than prisons. These cages of steel and concrete are a national disgrace. In them standards of humanity and decency are violated, and the presumption of innocence which is so basic to American justice is ignored.

. . . Having read a fair number of court opinions and scholary articles on the subject of current prison conditions and their baleful consequences both to individual inmates and the community, we think a serious argument could be advanced for a return to the old system (banishment, flogging and mutilation). . . Cases dealing with facilities which are principally employed as pre-trial detention centers have held uniformly that their role is but a temporary holding operation and their necessary freedom of action is concomittantly diminished. . . . the purpose of incarceration was simply detention in order to assure presence at trial. Punitive measures in such a context are out harmony with the presumption of innocence. . . . punitive measures are also out of harmony with the Fourteenth Amendment of the Constitution, which forbids the deprivation of liberty without due process of law.

Although restraints on liberty are required to assure the presence at trial of persons unable to make bail or charged with capital offenses, such restraints must be circumscribed to include only those which are absolutely necessary. As in any case where personal liberties are affected, the state bears the burden of justification. . . . If a pre-trial detainee is incarcerated in worse circumstances than the convict who is being punished, it is difficult to say that the detainee is not also being punished. It is clear that conditions for pre-trial detention must not only be equal to, but superior to, those permitted to prisoners serving sentences for the crimes they have committed against society. . . . Charles Street Jail unnecessarily infringes upon their most basic liberties, among them the rights to reasonable freedom of motion, personal cleanliness, and personal privacy.

The geography of these holdings is not confined to the South where we would expect them, in places like Louisiana, Arkansas, Mississippi and Texas. Similar decisions are found in Rhode Island, Massachusetts, New Hampshire, Ohio, Pennsylvania, Michigan, New York, Nevada and California. Nor are they restricted to Federal courts as the equivalent of our Superior Court judges have found unconstitutional conditions in county jails in Detroit and Philadelphia.

While the filed complaints encompass a myriad of jailhouse conditions, those that are found unconstitutional and subject to court order of remedy, fall into about six recurring areas.

One-Class Room Service

The first area is lack of classification of prisoners. That is the failure of county jails to separate the felon from the misdemeanant, the pre-trial detainee from the convicted offender, the youthful offender from the older, experienced offender, the non-violent from the aggressive, the heterosexual from the homosexual. The other side of the problem is that without any classification, jails tend to house everyone in a maximum security setting, i.e., small cells, small, narrow catwalks to small dayrooms and no chairs, no lamps, etc. The problem is that some who are housed in the jail don't need that maximum security and could get on quite well with each other and the security of the institution in a more barracks type arrangement.

Those courts that have had this area as an issue have generally required some basic division, either the pre-trial detainees move into a minimum security area where close supervision is substituted for close confinement or the whole population is divided between minimum security and maximum security and the pre- versus post-trial distinction is secondary. The other solution of a few courts is to simply require single cells for all inmates, which ends the inmate assault and coercion problem. It also can be, depending on the surrounding and how often if at all the cell door is locked, a maximum or minimum security situation. It should also be noted to the courts' credit, that practically all opinions that deal in this issue recognize that classification and the determination of who needs maximum security and who needs minimum security are very tricky areas and this is why they have shown commendable restraint in not trying to second guess jail administrators beyond the basic divisions noted above.

The Constitution: A Room With a View

The physical living conditions by which is included the amount of lighting, ventilation, heating, cooling, the number and sanitation of the toilets, sinks and showers, have been a common area for litigation and concern for the courts. Jails were not built here or elsewhere with an eye towards letting natural light into the cells or letting prisoners see the earth or sky, for security reasons. The heat was typically based on a furnace and thermostat somewhere else in the courthouse and the jail temperature was the end and unrelated result of whatever temperature was necessary for the comfort of the Sheriff or judge or whoever else was the object of concern.

Building techniques have come a long way since the day these jails were built and adequate security with clear glass, compartmentalized heating and cooling systems are now taken for granted. Judges in the jail litigation cases have viewed these conditions of excessive heat and cold, inadequate ventilation and inability to see the sun, sky or outside world, as threats to and unnecessary burdens on the health of prisoners and therefore a cruel and unusual punishment. The consequence has been remedial orders for clear glass windows, adequate ventilation and/or cooling and heating.

Who's Coming For Dinner?

The question of visitations to prisoners, and the related issues of who gets to visit, how long and in what fashion, are almost uniformly aired in every case which may be an indication of their importance.

The battle is over the frequency, length and nature of visitations to prisoners by family or friends. Washington seems like a typical state in this regard. The mean average for county jails in our state would be about as follows: Each prisoner has two periods per week in which he may be visited, each visit should not exceed 15 minutes and visitors are restricted to family members and not friends even if there is no family. The visiting is done through a small-pore wire screen, covering a hole or square nine inches in diameter. In the newer jails the visiting is done in front of plexiglas windows, with telephones.

The jailors I have met are sincere in justifying the present situation on a number of grounds. They point out that jail visits require intensive use of guards to shuttle the prisoners to the visiting area and guard it. They state that to increase the frequency or length or nature of the visiting hours would mean more guards and drawing resources away from the cellblocks. As for "contact visits", where inmates and visitors can visit across a desk or next to each other on chairs with no screens, no glass or no walls; to a man the jailors state this will further open up the jails' two biggest security problems, the introduction of weapons and narcotics into the cells. They also feel that every counter-measure suggested, including metal and narcotics detectors and strip searches, are expensive, time-consuming and still will not be 100% effective, especially as to drugs. On the other side of the aisle are the prisoners, their lawyers and some correctional figures.

The advantages of frequent, "contact visits" was most forcefully put in the testimony of Dr. Karl Menninger of Topeka, Kansas who testified in a jail suit that the typical visit through a piece of glass was:

> . . . the most unpleasant and disturbing detail in the whole prison . . . a violation of ordinary principles of humanity . . . (it) amounts to dangling a fragment of meat in front of a dog and jerking it away.

He went on to describe his opinion of the critical value of contact visits as follows:

> . . . . the most positive experience . . . is going to be the re-establishment of a feeling of contact, of closeness with somebody who has enough love for him to come clear in there to see him. . . Because everybody lives constantly with a lot of contacts established, with you, with the judge, with the grocer and so forth. These have all been broken for this man.
>
> Now this makes for a dangerous state of instability because without these contacts he can't live psychologically.
>
> All this is interposed into this establishment of this contact, a pane of dirty glass and a dim – in my experience often a non-functional telephone. A person goes in and shouts and the poor visitor stands up on his or her tiptoes and tries to see him. And he shouts and after a certain amount of frantic effort to establish a piece of communication, they just give it up. . . .
>
> . . . it breaks that very important human lifeline of contact.

Some courts have ordered contact visits, a few courts while finding the other items listed elsewhere in this article to be unconstitutional, did not find curbs on visitation to amount to unconstitutional deprivations. Among the courts going into this area, there was a surprising lack of recognition that both sides of the argument may have some merit. That is for the estimated 20-40% of the inmates whose history and profile dictate them to be of such a risk as to be worthy of maximum security, contact visits would be a security disaster. For those 60-80% for whom minimum security is an appropriate classification, the security disadvantages probably do not outweight the psychological advantages.

Post Cards Only

Correspondence to and from county and city jail prisoners is a frequently litigated area. We started with an era where all mail, in or out, for all prisoners, was read and censored. The evolutions from that standard have been constant but in mixed forms. Some jails read outgoing mail but not incoming mail. Some jails don't read any mail but check incoming mail but not outgoing, and so forth.

The courts have found the delay and censorship of mail uniformly objectionable. None have put an outright ban on reading mail and most recognize that their ability to frame a set of remedial rules to fit all situations is limited. But generally court orders go along the following lines – no censorship of outgoing mail, no censorship of incoming mail from the prisoner's attorney, any judge or other elected public official and inspeciton but not reading of incoming parcels or letters with some exceptions to the last two rules allowed for convicted prisoners.

Justice Stops At The Gate

Disciplinary procedures by which prisoners accused of violating the rules, the security or the order of the institution, or sometimes all three, are punished, have been a common subject in jail suits.

The past common practice has been that any guard on any shift can discipline any prisoner for any reason, with a sanction. Most jails required a follow-up report to the jail supervisor or Sheriff. Those courts concerned with county jail litigation have followed the prison cases in applying due process as we know it in other settings – i.e., notice of the charges, the right to be present for a hearing of the charges, to face one's accusers, to have witnesses present and otherwise tell your side of the story – to jail discipline when serious sanctions are contemplated. What consitutes serious sanctions is debatable but uniformly it includes placement in the isolation cell. Sanctions other than that, e.g., loss of good time, revocation of trustee status, loss of reading materials, no radio in the tank and others, are hard to predict as the courts have not clearly defined serious sanctions. Whether the accused is entitled to counsel or counsel-substitute as other persons in other due process type hearings are afforded is even mukier and what goes in murky, comes out murky. Witness this opinion from a confused judge:

> Counsel or counsel-substitute must be allowed . . . in cases of seriously disputed infractions, substantial mitigation or which involve difficulty of presentation because of the complex nature of the charge or because the detainee appears incapable of speaking effectively for himself; . . .

Exercise

Finally the daily lack of activity, the time popularly known as "dead time" is a regular item of concern in court opinions. To understand the concern one has to understand the daily life of a jail detainee. He "lives" in a cell with one to five other inmates. Besides the space taken up by the two or three double deck hinged beds, there is room for a toilet and a walk-way about three feet wide. Outside his home area, he has a walkway about five feet wide and 25 feet long which leads to his dayroom. This dayroom has enough space for one or two metal table and bench combinations that look like gray picnic tables, plus room for two men to pace back and forth about 15 feet each way. Life is three meals a day, on the gray picnic tables, the reading of comic books and paper back books, playing cards, talking, pacing, a shower and getting locked in at night between 7 and 10 p.m., depending upon which jail you are in. This is the life each day, every day, it never varies and there is no exercise. Trustees get a chance to operate outside this routine but pre-trial detainees are never made trustees.

Chief Justice Warren Burger gave his view of this daily activity and its consequences in these words:

> Playing cards, watching television or an occasional movie with nothing more, is building up to an expensive accounting when these men are released – if not before. Such crude recreation may keep men quiet for the time, but it is a quiet that is ominous for the society they will try to re-enter.

Those courts that have ruled on dead-time have particularly focused on the rights of the pre-trial detainee. They found this enforced idleness imposed by the jail to be without any justification for the compelling necessity of the security of the institution or its need to insure the pre-trial detainee's presence at trial. Therefore the remedial orders require exercise, indoors and outdoors, at least two hours a week or sometimes as much as an hour a day in some jurisdictions. The orders require activity alternatives such as G.E.D. courses, crafts, job counseling, vocational programs and expanded reading opportunities from newspapers, magazines and libraries.

So much for the national view, the next inquiry is what is going on in our state. Washington has presently operating, about 133 county and municipal jails that get about 175,170 new guests each year. On an average day there will be about 900 pre-trial detainees and 900 prisoners under jail sentences or awaiting transfer to a state prison. The condition of these 133 jails varies on a wide spectrum. In the past eight months, I have gone through at least a third of them including every major jail in every part of the state. Without much contradiction I suspect, I can say there are three or four jails that are new or remodeled with fairly good designs and run with a philosophy that would be approved by the judicial authors noted in this article. On the other hand, there are three or four that could easily make a setting for a jail-type "Snake Pit" without adding any gruesome props. Neither side of the Cascades has any exclusive franchise on either category. For the 125 other jails that fall in the gray area, judgment is pretty much up to the beholder. Each has a unique feature. In South Bend there is a wonderful grandmotherly lady who cooks wonderful meals for the boys. In one county you get to order right from the restaurant menu and if the Sheriff knows you, the door to the jail may not be locked and you are trusted to stay there. In another county conjugal visits are allowed if the Sheriff knows you or your people. But beyond these local exceptions, the conditions of the jails are, like beauty, in the eye of the beholder. For example as to one county jail a state jail inspector wrote:

> . . . this form of confinement is apt to result in serious charges leveled at local controlling agents; and the welfare and safety of persons confined under such conditions is definitely in jeopardy.

As to the same county jail a local elected official in the criminal justice system stated:

Tomy knowledge there have been no assaults on any inmate as a result of inadequate staffing. In my opinion there is need of some plumbing to be done to complete sanitary arrangements. Other than this, the facilities appear to be satisfactory.

Changes By Lawsuit

Change seems to be blowing in the wind not only in the other states but in this state as well. Jail litigation, past and present, is a fact. A class action by Snohomish County Jail inmates was settled in a stipulation that acknowledged the constitutional rights of the inmates and had the County agree to changes in the areas of correspondence, discipline, access to reading material, visitation and telephone calls. The order of settlement also included monitoring by the Federal judge that signed the order. Pierce County has an inmate suit brought against a number of county officials which resulted in a judicial order revising that jail's operations in the disciplinary, classification, communications and correspondence fields. To my knowledge, which is not exclusive, there are currently pending damage suits over medical care against an Eastern Washington county brought by an inmate and another case over disciplinary sanctions brought against the prison at Monroe.

Beyond that, the legislature appears to be expanding beyond their past delegated concern about county and city jails. Quite a while ago they created within the Department of Social and Health Services, an office of State Jail Inspector. He was to establish recommended procedures about the safekeeping, health and welfare of the jail prisoners. He also was to prescribe minimum standards for the operation of the jails. The Inspector was to make recommendations to the Sheriffs about how they could improve jail conditions and he was to report annually to the legislature. However there were no enforcement powers, no sanctions and no funds to improve the jails forthcoming from the legislature. The supreme court has ruled that while the jails are not owned by the State, they are part of the State penal and correctional system and their detention function is an indispensible part of the criminal proces of the state.

In the last two years the legislature has acted to set up a State Jails Commission. The legislature requested that the Commission draft a proposed set of minimum standards for city and county jails and to obtain cost estimates for the implementation of the standards state-wide. This was done last year by the Commission and it came up with an excellent set of standards that would also gain the admiration of most of the judicial authors quoted in the previous pages. In the current session the legislature seems likely to make the Commission permanent. It is also probable that the Commission will be given official standard setting powers and that the State Jail Inspector will be given enforcement powers and sanctions, including the ability to close a jail. The hitch in all this is that the standards of enforceability will depend on the legislature's appropriation of some or all of the improvement money. It does not appear that the appropriation bill will be passed by the legislature this year.

All of which brings this review up to the present and leaves only the philosophical question, is all this judicially and legislatively ordered changed for weal or for woe? There are definitely two schools of thought. The modern day successors to the tenth century crowd that felt that jailing instead of flogging and banishment was "useless and much too mild" are most eloquently represented by George Corley Wallace. Governor Wallace, a former judge and now Presidential aspirant, recently learned that his entire state prison system had been ruled unconstitutional by a Federal judge in Montgomery who had also put the system under a court order. Parenthetically it should be noted that the same judge had previously ruled the Alabama state public education system, as well as the state mental health program, unconstitutional and had similarly put those under court order. Governor Wallace charged that the country was being run by "thugs and Federal judges". The sin of the latter was that they wanted to create a "hotel atmosphere" in his prisons and they paid "no attention . . . to the victims of crime"; they only wanted to make common citizens "foot the bill to make the criminal comfortable". And with a traditional Wallace close, the Governor said a vote for him as President was needed so that it "might give a political barbed wire enema to some of the Federal judges in this country".

On the other hand, many who wish not to coddle criminals but to reduce crime have sided with the changes. Most trial judges will state that if county jails were rehabilitated in the areas noted in this article so that a prisoner was free from being brutalized and sodomized, could be free from being coerced into taking or supplying drugs, could avoid dead time and have some meaningful contact with his family and live in clean conditions, there would be more incarceration and less probation in this state. U.S. Attorney General Edward Levi, the nation's top law enforcement official, put his support for jail changes on another basis. His remarks sound quite similar to Justice Burger's previously quoted remarks about "dead time" building up to an "expensive accounting" for us, society. Edward Levi said, a few months ago, that:

> Even if we think of the criminal law as serving as a controlled mechanism to exact retribution, we ought to remember that it was to serve the requirements of humaneness as well as of order, that personal vengeance is no longer the law's way of justice. Such humaneness is not sentimental. . . . Decency can reinforce decency in return just as much as substandard, inhumane conditions of confinement can reinforce a negative effect.

The issues are far from over in this area. Each reader will have to be his own judge of his own jail and whether it is productive of more crime or less crime. The philosophical battle may be waged in forthcoming letters to the editor, but in the end it rests in each reader's experience and values. □

Report on ABA Meeting

A Freshman's Trip to the Yellow Pages

By **William H. Gates**

The symbolism was marvelous. There they were, 200 years later, the ABA House of Delegates in Philadelphia, birthplace of the United States Consitution, arguing and anguishing over what the First Amendment requires of the legal profession. The spirits of Hamilton, Jefferson and Adams had to be fascinated at the intricate tangle into which their legal legacy had led their professional progeny.

As you walk into the hotel and enter the registration area a microphone is thrust in your face by a handsome young woman with a tape recorder strapped to her back "Hello, I am from radio station WIR – what do you think about lawyer advertising?" That was the dominant theme of the meeting from there to adjournment on the floor of the House, in the elevators, at cocktails – what do you think about advertising? The image I have is that of a proud lion thrashing about with a poisoned arrow in its side and the rest of the animals standing in a circle fascinated by its struggle. But let me leave this imagery and the problem of advertising for a moment to report some lesser events and some impressions about my first meeting with the ABA House of Delegates in February in Philadelphia.

The House consists of 350 members about 280 of whom were actually in attendance. State representation is based on lawyer population with one delegate being elected by the ABA members in his state and the rest designated either by the State Bar or by large local bar associations. From our state John Gavin, Bob Beresford and Cleary Cone are in the House representing the State Bar and DeWitt Williams is there from the Seattle-King County Bar Association. In addition, I sit as elected State Delegate, Joe Gordon sits as a former ABA officer, Grant Armstrong as a member of the ABA Board of Governors and Dave Andrews as an ABA officer (Treasurer).

The business meeting of the House covers two days. About a month before the meeting each delegate receives a book containing all of the reports and recommendations on which the House will be acting. For the February, 1976 meeting there were approximately 40 separate items, some routine and some very complex and controversial. There is provision for late items getting to the agenda through a special procedure and there were four or five of these.

I believe you all would be impressed as I was that the House basically is dealing with matters of substance and handling them well. The debate is of uniformly high quality. The House of Delegates will be meeting at the Olympic Hotel in Seattle February, 1977 and I recommend that any of you who have an interest in such things to arrange your schedule to spend an hour in the gallery.

A particularly impressive piece of business was the report of a special committee to study federal law enforcement agencies and dealing with the prevention of improper influence on such agencies. Chris Bayley of Seattle was a member of this committee. The recommendations included, one that the Congress should adopt legislation prohibiting the appointment as Attorney General of the United States of any person who has played a leading partisan role in the election of the President and another

Mr. Gates is the elected State Delegate from the state of Washington to the ABA House of Delegates with a three year term commencing with the midyear meeting held February 16 and 17 in Philadelphia. He indicates that he would be pleased to have your comments or to answer any questions you might have after reading this report.

establishing circumstances and procedure for the appointment of a special prosecutor. The Department of Justice did not agree with all of the recommendations of the committee and Deputy Attorney General Harold Tyler appeared in the debate on these points to represent the position of the Department. He was eloquent, but apparently not persuasive as his views did not prevail.

Back to advertising. The organized Bar is clearly under pressure on its virtually total prohibition of any form of advertising. Members of the Bar, federal agencies and consumer groups are challenging these long-standing restrictions. The sharpest point of attack at the present is a case in federal court in Virginia brought by a consumers' union against the Virginia Bar for preventing lawyers of that state from furnishing information to them for publication in a lawyers list for their members. The judge in that case has actually postponed his decision to see what action is taken by the ABA. There is a strong general feeling that the lawyers are going to lose this case on the basis of the First Amendment which recently has been construed to protect the freedom of some forms of commercial publication.

In December the ABA Committee on Ethics, chaired by Lewis VanDusen of Philadelphia, published a discussion draft of Amendments to the Code of Professional Responsibility (VanDusen No. 1) which would have greatly reduced the restriction on lawyer advertising. This generated a dramatic protest from lawyers and bar associations all around the country. In this reaction however, there was a clear reading that most lawyers were prepared for some relaxation of the traditional proscriptions, particularly in the area of law lists. The committee then came out in January with VanDusen No. 2 which was the subject before the House of Delegates Tuesday morning, February 17. VanDusen No. 2 would have permitted a lawyer to give information to a legal directory, including a directory published by a bona fide consumers organization, which described office hours, legal fees for a standard consultation or a range of fees for specific types of services and other facts that do not contain "a false, fraudulent, misleading or deceptive statement". The amendment specifically provided that testimonials or statements likely to create false or unjustified expectations of favorable results would be deemed inappropriate. VanDusen No. 2 would also have permitted a lawyer to hold himself out as limiting or concentrating his practice in one or more particular areas of the law.

Lawrence Walsh, President of the ABA noting his own grave concern about the dangers in opening the door to advertising and his own skepticism about the presumed benefits for consumers urged a prompt adoption of VanDusen No. 2. He and others who spoke for this proposal expressed concern that the language of a court opinion or opinions relaxing the restraints on public information about lawyers would be a much greater problem to deal with than those fashioned by the Bar itself.

The Committee on Professional Discipline, chaired by Shepherd Tate of Tennessee offered a substitute proposal. The Tate amendments provided for lawyers to furnish information to a directory published by a bona fide consumers group. It was more restrictive in that the description of data authorized to be published was: whether credit cards were accepted, office hours, a statement of the fee for an initial consultation or the availability of a written schedule of fees or an estimate of the fee to be charged for a specific service with the proviso that all such published data could be disseminated only to the extent and in such format and language uniformly applicable to all lawyers as prescribed by the authority having jurisdiction under state law. The Tate proposal also contemplated that the published data could include a statement as to fields of law in which the lawyer concentrates or to which his practice is limited. The system provided for in this proposal is referred to as the "fill in the blanks" system, meaning that the expectation is that the state authority (in our case the Washington Supreme Court) would establish a uniform list of data and format which the lawyer or law firm would simply fill in.

A key feature of the Tate proposal was that the yellow pages of the telephone directory were specifically referred to as a place where this data could be published. An interesting footnote to this provision was offered by one speaker who pointed out that the telephone company does not permit any advertisement of price in the yellow pages.

In the course of the debate over the substitution of the Tate proposal the reference to a specific provision for publication of a law list by a bona fide consumers group was deleted and there was added a provision for the publication of such a list by a state or local bar association.

As so amended, the substitution of the Tate proposal was carried on a vote of about a 60% majority. The opposition to this proposal was made up, first, of those who wanted the Bar to stand its ground on the present Code of Professional Responsibility without amendment and, second, of those who were concerned that the degree of control left to the state authority was still too great to meet the requirement under the First Amendment that the restriction be based upon a "compelling state interest".

After having been substituted for the Van-Dusen No. 2 proposals, the Tate proposal was adopted by the House by a healthy majority. This would appear to me to be a fairly clear reading that either because it is desirable or because it is inevitable, the majority of lawyers who have studied this problem are prepared for some relaxation in the traditional bans on advertising.

In spite of sharp differences of view and many close votes as the matter progressed, it was clear that the House of Delegates concluded this action, after some two and one-half hours of debate, with a feeling of having clearly defined the issues and alternatives and having set a rational course. The problem now goes to the individual states for such implementation as they may wish to make, the action of the ABA being advisory only.

The Bar may not have rid itself of this nasty arrow in its side, but on the basis of the chapter just acted out in Philadelphia there is good reason to believe that the wound is not fatal. ☐

BOARD CONSIDERS LEGISLATION, ATTORNEY ALCOHOLISM AND LONGER BOARD MEETINGS

REPORT OF THE MEETING OF THE BOARD OF GOVERNORS, FEBRUARY 18, 1976 AT PALM SPRINGS, CALIFORNIA

The Board of Governors of the Washington State Bar Association convened at the Canyon Hotel in Palm Springs, California on Wednesday, February 18, beginning at 9 o'clock a.m.

In addition to Board members, those present included G. Edward Friar, Executive Director of the Bar and C. James Judson, representing the Editorial Advisory Board of the *Bar News.*

Reported Items

President Bob Day commented on the American Bar Association meeting he attended in Philadelphia. Eddie Friar reported that preparations for the February Bar Exam were completed and that the number of examinees increased substantially. Betty Fletcher reported on a client indemnity fund conference which she attended in Philadelphia at the time of the ABA meeting. Betty reported that other states have experienced growing demands on indemnity funds and that in many situations, Bar Association disciplinary action has not been fast enough to put a prompt stop to attorney actions which might lead to a client indemnity fund claim. Concern was also expressed that in other states where the Bar Association spot-audits attorneys' trust accounts, attorneys are not divulging to clients that their trust accounts are subject to random audit. Many state associations believe that clients should be informed of this possibility so that they can take an appropriate course of action to protect whatever privacy they wish.

Code of Professional Responsibility Opinions

The Board approved CPR Opinion 13, which prohibits the listing of legal interns on letterheads of public or private law firms. Board members Fletcher and Raftis dissented. The Board unanimously approved CPR Opinion 164, which permits a non-lawyer employee of a law firm to use business cards identifying his relationship with a law firm, so long as the card shows his general status, such as "investigator," "para-legal," "clerk" or the like.

The Board reviewed a letter response of the CPR Committee of the Bar Association with respect to a resolution offered at the 1975 Bar Convention by lawyer Marvin Durning. The resolution requires the adoption of changes to the Code of Professional Responsibility to prohibit lawyers from serving as conduits for political contributions. The letter of the CPR Committee states that the Code of Professional Responsibility clearly prohibits this activity at the present time. Because the Durning resolution was considered redundant, the Board resolved to recommend no changes to the Code of Professional Responsibility but to publish the CPR Committee's letter in the Bar News. Board member Fletcher dissented from this action.

Proposed Legislation

The Legislative Committee of the Bar Association recommended that the Bar Association take a position with respect to several bills presently before the State Legislature. The recommendations were:

1. Opposition to SB 2947 with respect to creditor-debtor matters;

2. Opposition to House Bill 983 which would allow award of attorneys' fees to police

officers arbitrarily sued for actions in the line of duty, on the basis that such legislation would be discriminatory;

3. Opposition to SB 2864 on the basis that the bill would be a wholesale revision of the recently enacted Landlord-Tenant Act and that the Act should be allowed to function for a longer period of time before substantial revision;

4. Opposition to SB 2437 relating to modification of the defense of insanity;

5. Support SB 2866 relative to revision of the construction lien laws of the State with certain amendments to the bill;

6. Support amendments to Article IX of UCC as recommended by the Creditor-Debtor Section of the Bar Association.

Over dissent by Board member Walker the Board adopted the recommended views of Legislative Committee.

The Board referred to a subsequent meeting the question of whether the Board should involve itself more deeply in the recommendations of Legislative Committee, at least some of the members feeling that each of the proposed positions should be reviewed in depth by the Board of Governors rather than acting in substantial part on the recommendation of the Legislative Committee. The Board requested Eddie Friar to provide additional materials on legislative matters in the future.

The Legislative Committee noted that there are various proposals introduced in the legislature relating to privacy laws. The question of a Bar Association position on these bills and the possibility of creating a special Task Force on these issues was referred to a later meeting.

Court Rules

The Committee on Court Rules and Procedure reported with respect to the possibility of adoption of the Federal Rules of Evidence for use in state courts, and whether changes in the rules should be considered prior to adoption. Concurrently, a special Task Force has been appointed by Chief Justice Stafford, the Chairman of the Judicial Council, to study the problem. The Board resolved to delay any position on adoption of the Federal Rules of Evidence and possible changes in them until additional materials could be secured both from the special Task Force and the Committee on Court Rules and Procedure.

Continuing Legal Education

The Board of Governors adopted the following schedule for the CLE portion of 1976 Bar Association Annual Meeting:

Wednesday afternoon (September 15):
five section seminars of approximately two hours duration.

Thursday morning (September 16):
three CLE Seminars, 10:00 a.m. to noon

Thursday afternoon:
one CLE Seminar, 2:30 p.m. to 4:30 p.m.

Friday morning (September 17):
annual business meeting

Friday afternoon:
five section seminars of approximately two hours duration.

Saturday morning (September 18):
two CLE Seminars.

Further development of the CLE and the Section Seminars will be done by the CLE Committee.

Professional Liability Insurance

Quinan-Pickering, Inc. requested that the Bar Association endorse that firm as a source of professional liability insurance. The request letter contained an inference that the Bar Association's present endorsed insurer had sustained a significant net underwriting loss in connection with its operations in the State of Washington in the first 9 months of 1975. A question of concern about the financial picture of the present endorsed insurer was referred to the Attorneys' Professional Insurance Committee investigation and recommendation.

Legal Services Corporation

Governor Evans requested the Bar Association to submit recommendation of attorneys willing to serve on the Advisory Council of the Washington State Legal Services Corporation, which will be established under the terms of recently enacted federal law. The Board suggested a total of fifteen names for consideration by the Governor.

Bar Exam

The Board of Governors nominated the following lawyers to the Board of Bar Examiners:

Franklin D. Burgess
Austin James Farrell
Frederick B. Hayes
Delbert D. Miller
Walter LeRoy Williams

Betty Fletcher suggested that as a future agenda item the Board of Governors consider the possibility of professional examiners and graders of the Bar Exam.

The petition of John Robert Hahn, Jr. to take the February Bar Exam was denied.

Attorney Advertising

The Board of Governors adopted its position on the proposed changes in the ABA Rules governing lawyer advertising as follows:

1. The key point to be stressed in the Rules is the duty of a lawyer to facilitate the process of intelligent selection of lawyers by clients and to assist in making legal services fully available.
2. This duty will not be fulfilled by advertisements and public communications by individual lawyers. Rather qualifications of a lawyer could be more meaningfully presented in a law directory published by the State Bar, which would contain substantial information.
3. Personal solicitations should be prohibited. Board member Fletcher dissented.
4. Action on the recent advertisement by Richard Sanders was discussed in "executive session."

Federal Judgeships

Bob Peterson reported that the Tacoma Bar Association had requested that the Board of Governors take a position against the recommendation of Governor Evans that James Dolliver be appointed to a Federal District Court Judgeship. It having long been the policy of the Board of Governors not to take a position with respect to Federal District Court Judgeships, the Board declined to take action on that request.

The Board being advised that an additional position on the Ninth Circuit Court of Appeals may be available, the Board requested President Day to indicate to the appropriate parties that Washington, being presently represented only by Judge Eugene Wright on the Ninth Circuit, might appropriately be represented by an additional position.

Federal Criminal Reform Act

The Board strongly opposed proposed Senate Bill 1, the Criminal Justice Reform Act of 1975, which is presently being considered by Congress. President Day was directed to write appropriate parties with input to this position.

Attorney Alcoholism

The Board determined to create a Task Force to investigate the possible difficulties which may exist with respect to attorney alcoholism and to come up with proposals for a program to deal with whatever problem there may be. The President's letter in a future *Bar News* will request the participation of interested parties in that Task Force.

Future Board Meetings Lengthened

As the final matter, President Day suggested that the format of the Board meetings be changed to allow a 2½ day schedule rather than the present 1½ day schedule. The March meeting will be expanded to two full days, and future revisions of the Board meeting format will be considered at another meeting. The Board resolved to request the Chairman of the Prepaid Legal Services Committee to report on its status at the March meeting. □

Around the State

SEATTLE - KING COUNTY REPORT
By JOHN SOLTYS

The Seattle-King County Bar Association held its monthly luncheon meeting on January 14, and discussed the topic of lawyer advertising. **Cameron DeVore,** chairman of the Ad Hoc Committee on lawyer advertising, reported at the luncheon. The ABA had earlier called a special conference on the same subject in Chicago. This was attended by **Robert Beezer,** who subsequently reported to the Board of Trustees. A resolution generally approving the ABA's draft proposal regarding lawyer advertising was adopted by the Board; however, this cautioned that lawyer advertising in the State of Washington has not yet been approved by the Washington State Supreme Court.

John Vertrees and **William J. Boyce** announce that the offices of Harris, Vertrees & Boyce have moved to 1510 Pacific Building, Seattle, Washington 98104.

James Wickwire, Yale Lewis, Charles A. Goldmark and **John J. Dystel** have opened their offices for the practice of law at 500 Maynard Building, Seattle, Washington, as a new firm under the name of Wickwire, Lewis, Goldmark & Dystel.

James C. Young and **Richard T. Cole** have formed the firm of Young & Cole, Inc., P.S., and will continue to practice law at 1117 Second Avenue, Suite 607, Seattle, Washington 98101.

Tom Collins and **Gary Eliasen** have become partners in the firm of Merrick, Hofstedt & Lindsey.

John J. Soltys has become a partner in the firm of Karr, Tuttle, Koch, Campbell, Mawer & Morrow.

Richard D. Bonesteel, Vice-President and Counsel of First-bank Mortgage Corporation, has been elected to its Board of Directors and as its Secretary-Treasurer.

Joseph T. Mijich has relocated his law offices at 2844 Bank of California Center, Seattle, Washington 98164 (624-6993).

Skeel, McKelvy, Henke, Evenson & Betts and **Hullin, Roberts, Mines, Fite & Riveland** have merged and announce the formation of a new partnerhsip to be known as **Skeel, McKelvy, Henke, Evanson & Betts,** and that **Paul D. Carey** has become a partner in the firm and **Ingrid W. Hansen** has become an associate of the firm, which will carry on the practice of law at 40th Floor, Bank of California Center, Seattle, Washington 98164.

SKAGIT COUNTY REPORT
By K. R. ST. CLAIR

Judge **Keith M. Callow** of the Court of Appeals, Division I, will address the Skagit County Bar on March 1, 1976, on the quantity and quality of appeals. The last part of his subject matter may cause some absenteeism.

My associate, **James G. Smith,** was honored at a regular monthly meeting, on his 79th birthday. It was observed that he has been practicing in the Mount Vernon area for some 51 years. He began practice here with his father and as a bicentennial note of sorts, his father commenced practice in Mount Vernon in 1888 – which was one year before statehood and some 23 years after the Civil War.

Finally, as a cub reporter on his first assignment, I listened carefully to a case being argued before the Court of Appeals, Division II, where the defendant had been convicted of sodomy occurring in a public stall in a public toilet area. The prosecutor argued with conviction in his voice that a claim of privacy in such a place cannot be well taken because one cannot expect privacy when there was a 1/4" opening between the door and the wall of the booth and about a foot and a half at the bottom of the booth where your shoes could be observed.

This question was of such moment that I took quite an informal poll of the Skagit County Bar and we wish to report that it is resolved by this Bar Association that toilet booths are very private places.

SNOHOMISH REPORT
By **JAMES A. SIMONTON**

At the January meeting of the Snohomish County Bar Association, the following officers were elected for the year 1976:

Herman Michelson, President
Stuart French, Vice President
Donald J. Lyderson, Secretary
Faye Collier Kennedy, Treasurer

Jim Hunter has been in Sun Valley for a week of skiing but with little snow deferred to a visit in Palm Springs and golf in the sun.

Dick Thompson has been named as Everett's new city attorney, replacing **Al Hendricks** who is establishing his private practice in Edmonds.

SOUTH KING REPORT
By **JAMES L. VARNELL**

Jim Turner humored members of the South King County Bar at the February meeting with a progress report of a local Bar Committee's consideration of the advertising ban. Guests who did not escape his barbs included Court of Appeals Judge **Keith M. Callow,** King County Superior Court Judges **Eberharter** and **Smith,** and Court Commissioners **Niles** and **Quinn.**

The University of Puget Sound Law School continues to make its mark on the South King County Bar. **Scott Smouse** and **Andrew B.**

Weiner, both May, 1975 graduates of U.P.S., are now practicing in the area. Smouse is with Jim Gooding in Kent and Weiner is associated with Barney & McAdams, which has recently begun construction for an expansion of offices. We are not aware of the scheduled completion date, but we are expecting invitations to their open house. **Brian Gain** informs us that his travels may now be over. Brian's nomadic legal career now finds him associated with Stan Stone in Renton.

Hot Stove League Item: Everything is looking good at this time for the Pro Se softball team. **Clem Barnes,** who has expressed his displeasure with having to don the "tools of ignorance" behind the plate, has threatened to play out his option. Also, it appears that **Sam Baker,** a veritable speed merchant formerly with the Washington Athletic Club, intends to perform for Pro Se this year.

Tom and **Carla Bucknell** (pictured in the January issue of the Bar News) recently returned from Nashville where they had an opportunity to visit with their entertainer friends, **Mickey Gilley** and **Johnny Darrell.**

SPOKANE COUNTY REPORT

By GREGORY J. TRIPP

Those attending the weekly meetings of the Bar Association have been treated to politics and the FBI experience, among others.

Two lawyers, one a possible candidate and the other, an announced candidate for the governor's office have spoken to the Bar thus far this year. **Wes Ulhman,** Mayor of Seattle, tested the political waters earlier this year. **John Spellman,** King County Executive, an announced candidate for the governor's office, spoke to the Bar on February 13th. He told the members present at that meeting that there was a need for better management in state government and that he felt that his experience and proven techniques would assist state government and the taxpayers in the future.

February 20th found **Robert Dellwo** exciting the Bar Association with a talk on "The FBI That Was", which included Bob's experiences and observations in tapes, mikes and other questioned practices.

During February the Bar held its second evening meeting, a joint meeting with the Spokane county Medical Society. The audience at the well attended event heard representatives of the Medical Society, as well as Attorneys, **J. Donald Curran, William Wimberley, Eugene Annis** and **Frank Hayes Johnson,** discuss the merits of malpractice legislation pending before the state legislature.

The Young Lawyers recently elected to the Board of Trustees of the Spokane County Young Lawyers Section were **James Murphy, John Lamp** and **Robert Whaley.** Other members of the Board are **Bryan Harnetiaux, Michael J. Pontarolo, Thomas H. Brown** and **Lee M. Barns.**

Robert Whaley, with the help of **Barry Briggs** and **Randall Stamper,** are putting together the Law Day program for May 1. This year the Law Day program will be held at the Courthouse and will be open to the public. The Bar will be assisted by the Prosecutor's office, law enforcement agencies, the courts, and the Court Administrator.

March 6th was the date set for the annual Bar Auxillary-Bar Association Dinner Dance at the Sheraton Hotel. Dinner and a political potpourri were promised.

Paine, Lowe, Coffin, Herman and O'Kelly announced that **Gary A. Dahlke** and **Jerry K. Boyd** became partners in the firm earlier this year.

THURSTON-MASON REPORT

By FRED D. GENTRY

The Superior Court recently announced the appointment of **David Schultz** as Court Commissioner. David will be handling the domestic relations calendar, along with Juvenile and M.I. Hearings. David also serves as Olympia Police Court Judge and Tumwater Police Court Judge.

District Court Judge **Franklin Thorp** recently announced the appointment of **Daniel Berschauer,** late of the King County Prosecuting Attorney's Office, to serve as Court Commissioner.

New additions to the Thurston County Prosecuting Attorney's Office, are **Z. Peter Obertz, Jeff Watson, George Darkenwald,** and **Sandy Mackie.**

Gayer Dominick has become a partner in the firm of **Owens, Weaver, Davies & Dominick,** formerly Owens, Johnson, Weaver & Davies.

Mooney, Cullen & Holm has become the biggest firm in town with the addition of **Avelin Tacon**.

Out in Yelm, **Dennis McCarty** has hung out his shingle and reports that a slow, steady and growing string of clients is passing through his door.

Office Practice Tips

The White Rock Experience

I had to miss the State Bar convention at Vancouver, B.C., in 1974 because of other commitments. When my Senior Partner returned and told me of a presentation on Office Practice by J. Lorne Ginther of White Rock, B.C., I was chagrined that I had missed exposure to a fresh and fascinating development in the office practice field. Consequently, I sneaked a half a day out of the 1975 convention at Vancouver, B.C., and drove down to White Rock to spend two very rewarding hours with Lorne and the six members of his staff.

This office is structured on the modern lines. It has one lawyer and six supporting staff all of whom do not put in a full forty hour week. Consequently, I surmise that he has the equivalent of four full time people in so far as hours are concerned although he proudly states that from a production standpoint, they are the equivalent of more than six full time people.

The office is clearly departmentalized and has very definable departments covering probate, bookkeeping, litigation and real estate closing (or conveyancing as they term it). There are no automatic typewriters, computor terminals or unusual gadgets. There appears to be no word processing section as such. The offices are new and attractive but not imposing. There was an air of relaxation, maturity and competency throughout the staff including Lorne himself who on a Friday morning at 11:00 o'clock was comfortably attired in a light sweater, open necked shirt and no tie.

The most unique aspect of this office is the fact that the attorney (Barrister and Solicitor North of the Border) receives a monthly guaranty of $3,000.00 per month, all expenses are paid including a basic wage of the staff, which he advises me is measurably higher than the local competition, and all excess earnings go into a fund which at the end of the year is divided one-half to the attorney and one-half to the staff. The allocation among the staff is a product of discussion and agreement but the ultimate decision rests upon the attorney.

When Lorne addressed the Washington State Bar convention I understand several members raised questions as to the ethics of having a profit sharing plan in the legal profession. I personally feel that this is a false ethic and that if it results in better qualified, more satisfied staff and better service, that adherence to the ethics, so called, is counter productive. It strikes me that the division of profits would be more difficult if there were more than one lawyer. Lorne recognizes that if anything were to happen to him, the organization would have only two alternatives, either replace him with another lawyer or to close after approximately six months.

White Rock, British Columbia, is a relatively small and isolated community. The one question that Lorne asked me was how we train legal assistants. The answer to this question was discovered by Lee Turner's wife in Great Bend, Kansas years ago. All the training material is in our transfer files (or as Lorne calls them, dead files). We transfer our files by the year and they are all color coded. Consequently, a Probate Administrator, Litigation Supervisor or Real Estate Closing Supervisor can receive a highly specialized education simply by reviewing all the closed files in his or her area for the past year in transfers. This is how I trained my Probate Administrator and this is how I am currently training my Legal Intern. I simply told Mark to spend all his free time reading through the transferred files for 1974 and to make notes of questions to ask me for an explanation. Within ninety days, I expect him to be seasoned and knowledgeable.

The conclusions I drew from this refreshing experience are most encouraging for the sole practitioner or the small firm and they are that gadgets, expensive equipment and libraries are not essential in building a successful practice, people are. A strong staff developed on a fair and exciting incentive basis in the key to a really good office.

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.

Appellate Practice Notes

Will All-New Rules Change the Game?

By MALCOLM L. EDWARDS

The New Appellate Rules: Part 1

This is the first of a series of articles on the new appellate rules which are effective for cases filed on and after July 1, 1976. The full text of those rules appears in Supreme Court advance sheet no. 5, bearing the publication date February 13, 1976. All references in this column to pages are to the page numbers in this advance sheet. These articles are meant to be an aid to understanding the new appellate rules. The content of each column will be more meaningful if the reader has a copy of the rules at hand.

Development of Rules

The rules were drafted by a task force of the Washington State Judicial Council. The task force met for the first time in June, 1972. A draft of the rules together with the comments and forms was published and distributed to the Bar in March, 1974, after 21 months of intensive work by the task force. As a result of comments from interested persons, the task force made minor revisions in the published version of the rules and submitted the rules to the Judicial Council for review.

The rules were studied by members of the Judicial Council and the Judicial Council as a whole spent four full days going over the rules. In the fall of 1974, the Judicial Council forwarded the rules with changes made by the Judicial Council to the Supreme Court with a recommendation that the rules be adopted.

The Supreme Court intensively studied the new rules over the next 15 months. The court first spent two full days in en banc administrative conference going over the rules from begining to end. Additional administrative conferences were held on certain portions of the rules which were questioned by one or more of the justices. Later, a committee of justices was assigned to go over the rules with a fine-tooth comb. In addition, of course, each individual justice spent considerable time in non-conference study. From time to time, the Supreme Court made tentative decisions about changes in the rules and relayed those to a subcommittee of the task force for redrafting and further analysis by the court. The rules adopted by the court are a product of substantial time committement of all of the Supreme Court justices over a period of 15 months.

The above description should not overwhelm you and deter your further critical analysis of the new rules. I am sure that "bugs" remain. The job of rule drafting is never completed. Each member of the Bar and other interested persons should feel free to express his or her suggestions about changes in the adopted rules at this time or at any time in the future. Those suggestions should be sent to the Clerk of the Supreme Court.

Introduction to Rules: Generally

The rules are more than a set of amendments to the existing appellate rules found in ROA and COROA. Rather, the new rules on appeal are a complete revision of existing rules and supersede each and every appellate procedural rule now in existence. In addition, some but not all of the Court of Appeals and Supreme Court administrative rules are superseded by the new rules on appeal. The important thing here is that the new rules are intended to be complete within themselves, without reference to any other appellate rules.

The old rules were themselves incomplete. Many important points of appellate procedure had to be gleaned from decisional law. And one could not always tell which of the old rules were incomplete. The drafters of the new rules intended to codify all the rules on appeal, not just a part of them. However, I am sure a perfect job was not done in this respect and judicial precedent will be needed to flesh out the rules.

Under the old rules, some statutes took precedence over the new rules, and some rules took precedence over some statutes. The old rules did not say which was which. The new rules specifically provide that all statutes on appellate procedure are superseded, unless a particular rule specifically indicates that statutes control.

The new rules should also ultimately be more easy to understand than the old rules. A substantial amount of time was spent in the development and implementation of a uniform drafting style for the rules. For the most part, the style follows that recommended by Dickerson, in *The Fundementals of Legal Drafting*. The intent was to use the same words in the same ways in each of the rules to improve clarity.

Outline of Rules: Table of Rules

The place to begin your study of the rules is to carefully study the Table of Rules at pages 1133 through 1137 of the advance sheet. This Table of Rules sets forth the name of each of the 18 titles, and the caption of each of the rules listed in each title. For the most part, the titles are arranged in the order of the steps a party would undertake in a typical review proceeding. There is a garbage title. Title 18 called "Supplemental Provisions" includes a number of rules which could not analytically be placed under one of the prior titles and were not individually deserving of one or more separate title.

Each title completely covers the subject matter named in the title. For example, Title 10 is called "Briefs". *All* of the rules directly related to appellate briefs are in that title. The name of each of the individual rules in the table of rules further defines the content of each title. Thus, a study of the Table of Rules will provide you with a comprehensive view of the organization of the rules and the subject matter covered by the rules.

Outline of Rules: Title Analysis

A more comprehensive summary of the content and organization of each individual title can be obtained from the outline analysis which is located immediately before the text of the rules in each title. This outline includes the name of each rule and the descriptive heading of each subdivision within each rule. This outline provides a convenient place to begin a detailed study of each individual title.

Outline of Rules: The Titles

Printed below is the name and number of each title in the new rules. Subsequent columns will discuss these titles in detail.

Title 1: Scope and Purpose of Rules
Title 2: What Trial Court Decisions May May Be Reviewed – Scope of Review
Title 3: Parties
Title 4: Where to Seek Review of a Trial Court Decision
Title 5: How and When to Initiate Review of Trial Court Decision
Title 6: Acceptance of Review
Title 7: Authority of Trail Court and Appellate Court Pending Review
Title 8: Supersedeas, Injunctions, and Other Orders to Insure Effective Review – Bonds
Title 9: Record on Review
Title 10: Briefs
Title 11: Oral Argument on Merits
Title 12: Appellate Court Decision and Procedure After Decision
Title 13: Review by the Supreme Court of Court of Appeals Decision
Title 14: Costs
Title 15: Special Provisions Relating to Rights of Indigent Party
Title 16: Special Proceedings in the Supreme Court and Court of Appeals
Title 17: Motions
Title 18: Supplemental Provisions

Forms and Index

An appendix of 21 forms appears on pages 1282 thorugh 1310. A reference to the rules to which the form applies appears immediately below the name of each form. These forms will be discussed in subsequent articles as we study the individual rules.

An index to the rules is at pages 1311 thorugh 1334. The index was prepared by M. Bayard Crutcher. The preparation of that index was a very substantial task. The index is comprehensive and will be of substantial assistance to those using the rules in the future.

The Task Force

As has been pointed out under the caption

Malcolm L. Edwards is with the Seattle law firm of Edwards, Wetherall and Barbieri. 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.

"Development of the Rules", a substantial number of people devoted a large amount of time to the preparation of those rules. As chairman of the appellate rules task force, I am particularly sensitive to the time task force members spent on the project. Each member served without pay. Attendance at task force meetings was without exception very high. In addition, the members spent substantial amounts of time outside of meetings. Each member of the task force made a significant contribution; the rules would be different if any one of them had not served. The contribution of task force member time if charged at usual hourly rates would have exeeded $400,000. The following persons were members of the task force from its inception:

Virginia O. Binns, attorney, Seattle
M. Bayard Crutcher, attorney, Seattle
Linda L. Dawson, attorney, Legal Services Center, Seattle
Herbert H. Freise, attorney, Walla Walla
Laurence Gill, then clerk of Division II of the Court of Appeals, now Deputy Clerk to the United States Supreme Court
Will Lorenz, attorney, Spokane
William M. Lowry, then Clerk of the Supreme Court
Joseph D. Mladinov, Special Counsel to the Prosecuting Attorney for Pierce County
Lewis Orland, attorney, Spokane
Dan Reaugh, attorney, Seattle
Joseph A. Thibodeau, Commissioner of Division I of the Court of Appeals
Morton Tytler, Assistant Attorney General, Human Rights Commission

In addition to the persons named above, Karl Tegland assisted the task force for one year as a full-time employed staff attorney and for one year as a part-time staff attorney. Since that time, Mr. Tegland has continued to contribute his services to the task force. He was the Reporter for the task force throughout most of its work. □

Next Month

The New Appellate Rules: PART 2

Clinical Law Education
in Washington State

Proposed Rule for Student Practice

By LAWRENCE L. LONGFELDER

In June, 1975, the Board of Bar Governors of the Washington State Bar Association requested the Legal Education Liaison Committee to make a full survey of the problems involved in the implementation of Clinical legal education programs in the State of Washington. The Board further requested the Committee to confer with the law schools of the state as a part of its survey and make recommendations for possible Rule changes as a result of its investigation. The result of the Committee's investigation and study is Proposed Admission to Practice Rule 8 B which appears elsewhere in this journal. The proposed rule is designed to allow the Law Schools of the State of Washington — Gonzaga University School of Law, University of Washington Law School and University of Puget Sound Law School — to implement comprehensive Clinical education programs which would be unworkable under the present rules.

The Need for Clinical Education

Since the late 1960's partially as a result of criticism from several sources, including the United States Supreme Court, there has been a developing awareness in law schools of the necessity of clinical education programs in order to bridge the educational gap between classroom theory and practice reality. The bench and bar have likewise been cognizant of the need to add dimension to a law student's experience by allowing clinical exposure through limited student practice. Forty of the forty-four states in which law schools are located have authorized law student practice. *See State Rules Permitting the Student Practice of Law: Comparisons & Comments,* Council on Legal Education for Professional Responsibility, 2nd Ed. 1973 (hereinafter Student Practice Rules). More than half of these states have adopted their student practice program since 1967. Slightly more than 80% of the A.B.A. approved law schools in the United States report established clinical programs which enroll over 13,000 law students. See *Survey and Directory of Clinical Legal Education, 1974-1975,* Council on Legal Education for Professional Responsibility, Inc., May 1, 1975 (hereinafter Survey). Of the some 346 types of clinical programs available to students, approximately 50% of the offerings involve a law school-operated and supervised clinic. Survey, supra.

Law school clinical education in Washington is in its formative stages. The 1974-1975 survey of clinical programs discloses no programs in any of the law schools of the state, although each of the three law schools is now in the process of initiating such programs.

Clinical education is properly viewed as an alternative, or supplementary, mode of education that essentially involves the student in learning by doing. Law schools have tended to ignore clinical methodology until fairly recently, partly because the analytical skills thought to be gained through the use of the Socratic method introduced by Dean Langdell at Harvard in the 1870's were considered to be of focal importance to competent lawyers, and partly because the Socratic method is cheaper. Medical schools, on the other hand, have used principally the clinical mode of education since the turn of the century, a principal factor accounting for their low student/faculty ratios. While the discipline of medicine does tend to lend itself more to clinical teaching than does law, the medical school model is instructive in affording a perspective on the proper place of clinical education in a professional school. The medical professional association, and the schools it generally supervises, are intent on insuring that graduated practitioners not only master the principles taught, but that, even more, they possess the skills necessary to deliver the physician's services.

Law schools must also take steps to insure that their graduates possess the skills necessary to deliver the services they will be called on to provide. It is in this general area of developing a mastery of lawyering skills that clinical education can best supplement the other teaching modes used in law schools. Thus, the intent of clinical legal education is to endeavor to teach those lawyering skills – client interviewing and counseling, artful drafting, negotiating, litigation management, oral advocacy, and trial conduct – and to contextualize the substantive and procedural law students have learned earlier.

The idea that this experience should wait until students have graduated or can be accomplished adequately under present Rule 9 is challenged by clinical educators in the law schools.

They point out the Rule 9 supervisor's goal of providing service for his client and the student's educational requirements may and often do conflict. The practicing attorney has only one purpose – to do what has to be done for his client. He may not see himself as a teacher and he may not have the time to be one. The student, on the other hand, requires some in-depth explanation of the processes he is participating in, if his experience is to contribute significantly to his educational development. The law schools feel that this expanded educational experience is what they can provide in their clinical programs.

Likewise, most law offices do not furnish a neophyte lawyer with beginner's instructions; they don't send him to court with a supervisor, then dissect his performance, then send him again if he did badly. While it is true that many law offices guide their young lawyers well, and many self-taught lawyers speedily master their skills, it is the function of legal education to short cut the hard road of experience in the arts of practice as well as in legal theory.

The Need for a Clinical Practice Rule

The three law schools in Washington have attempted to design Clinical programs within the structure of present APR Rule 9. It is an extremely difficult task. Because it is designed primarily to provide for student internship in a private practice apprenticeship setting, Rule 9 works somewhat awkwardly where student practice is supervised by law school faculty. Present Rule 9 provides a maximum 2:1 supervisory ratio, for example, which is responsible where the supervising lawyer has a substantial caseload of his own and diverting responsibilities, but significantly less appropriate in the law school context where a supervising faculty member has no caseload and his time is devoted substantially to supervising student work.

The student practice rules of most other jurisdictions, and the ABA Model Student Practice Rule are designed to permit both law student clinical work and student apprentice work. See Student Practice Rules. What is needed in Washington then, is a provision facilitating limited practice, by third-year students, whose work is educationally directed by their law school and who are directly supervised by law school faculty.

The Proposed Rule

Rather than seeking to change present Rule 9, which has proved quite satisfactory in the setting for which it was designed, the Committee has proposed an addition to present Rule 8, an existing rule designed to cover admission for educational purposes, but which presently allows limited admission only of law faculty or post-graduate students. Our proposal creates a new section under Rule 8, "Limited Admission of Law Students Enrolled in Clinical Programs".

Most aspects of Rule 9; e.g. student eligibility, the extent of student supervision, permitted student activities, nature of the limited admission, are adopted in new Rule 8B, nearly verbatim, as we feel Rule 9 was clearly drafted, and addressed many, if not most, of the appropriate considerations surrounding student practice. The proposal does make, however, the following changes for student practice in an educational setting:

1) Student practice in a clinical program is limited to the representation of those unable to afford private counselor on non-fee generating cases unless a clinical program allowing such representation is specifically approved by the Board of Governors.

2) No intern or supervising faculty member may receive a fee from a client for his or her services.

3) Supervisors are required to be faculty members of the school in which the student is enrolled.

4) Faculty members who are admitted in Washington, and have actively practiced for

three years, are eligible as supervising faculty, and also faculty members who have been actively engaged in the practice of law in other jurisdictions for 3 or more years who have been admitted under Rule 8A.

5) The maximum student/faculty supervisory ratio, in a law school clinical program, is expanded to 10:1 except for deviations for specific programs to be approved by the Board of Governors.

6) Supervising faculty members are required to be "substantially available" for the performance of their supervisory duties.

7) Law schools operating clinical programs are required to maintain appropriate malpractice insurance coverage for supervising faculty members and student interns.

The rationale for a number of the proposed changes deserve some comment.

Subsection (5) (a) of the proposed rule, requires that the supervisor be a faculty member of the approved law school where the student is enrolled. This subsection deliberately avoids permitting faculty members of one school to supervise students enrolled in another school, as attenuated supervisory relationships are felt to be undesireable both professionally and educationally.

Proposed Subsections (5) (b) (i) and (b) (ii) set out the requisite practice experience a faculty member must have to be eligible to be a supervising faculty member. The former tracks present Rule 9.A directly: one who is an active member of the Washington Bar, and who has been actively engaged in the practice of law for three years qualifies as a supervising faculty member. The two subsections read alternatively, however, and new subsection 8.B (5) (b) (ii) will allow a faculty member who has been actively engaged in the practice of law in other jurisdictions for three years, and who has been duly admitted under Rule 8.A, to act as a supervising faculty member. The Committee considers it important that law schools be permitted to recruit, as clinical law teachers, persons with extensive practice experience in other jurisdictions who are well-qualified to teach. Particular importance attaches to this provision since Washington does not permit general admission on motion after five years' practice in another state or states, as do most jurisdictions.

Proposed subsection (5) (c) establishes a new supervisory ratio limitation for intern supervision in an educational setting, a ratio of 10:1. Supervisory ratios established by rule are not common: Washington, California, West Virginia, Oklahoma and Wisconsin are apparently the only states that fix such maximums; other states leaving the fixing of supervisory ratios to law schools operating in-house clinical programs. See Student Practice Rules, p. 11. Nonetheless, close and tight supervision is the keystone of a clinical program's success, and the Committee, therefore, proposes a maximum supervisory ratio, 10:1, the ratio provided by the California rule, unless a greater ratio is specifically approved by the Board. See Calif. State Bar Board & Governors Rules for Practical Training of Law Students, Rule V.B.

Proposed subsection (5) (d), to be read together with (5) (c), requires that a supervising faculty member be "substantially available for the performance of his or her supervisory duties". The language is intended to leave some flexibility to the school operating a clinical program; a faculty member supervising two student interns would not have to devote the attention to supervisory duties that a person supervising ten interns would. Nonetheless, the Committee felt it appropriate that the rule reflect a requirement that a faculty member devote such time to his supervisory duties as the scope and size of the clinical program involved reasonably and objectively demand. See A.B.A. Model Rule, Section VI.C.

Proposed 8B (5) (f) addresses an otherwise troublesome malpractice problem not confronted by present Rule 9 interns. Presently, Rule 9 interns are covered ordinarily under the malpractice insurance policy covering their supervising lawyer. Under most policies, the supervising lawyer assumes malpractice liability for an intern under his or her direction. In an educational setting the establishing of such derivative liability might be more difficult; students themselves might incur liability. The Committee consequently feels that this provision is necessary and appropriate for the protection of the students as well as the public.

Recommendation by the Committee

The committee has endorsed the rule as presently proposed (including the indigency requirement) by unanimous vote of members present and voting at the November meeting of the Legal Education Liaison Committee. It has likewise been endorsed by all three law schools, representatives of the schools having contributed significantly to its authorship. The Board of Governors in proposing the rule and the alternate form of the rule, deleting the indigency requirement, wish the members of the association to respond in order that the Board can have the opinions of the association members prior to referral of the rule to the Supreme Court.

The Legal Education Liaison Committee has spent much time and effort in attempting to draft a workable rule to protect the public while at the same time allowing a proper clinical educational program to be developed at the three law schools. The committee and board invites comments from the bar association membership on any aspect of proposed Rule 8B.

RULE8. ADMISSION FOR EDUCATIONAL PURPOSES

A. Limited Admission of Law School Faculty Members.

Notwithstanding any provision of any other rule to the contrary, an attorney who has been regularly admitted to practice in another state of the District of Columbia and who is enrolled and in good standing as a faculty member in a program of an approved law school of this state involving clinical work in the courts or in the practice of law which has been approved by the Board of Governors for the purposes of this rule, may, upon application to the Washington State Bar Association and without payment of fee, be admitted to the limited practice of law in this state for the period such applicant actively participates in said program and complies with the Canons of Professional Ethics. An applicant hereunder shall establish in the manner specified by the Board of Governors that he:

(1) Satisfy the requirements of Rule 2B(2);

(2) Is of good moral character;

(3) Is admitted to practice in another state or the District of Columbia, and is in good standing as an attorney of such bar;

(4) Is enrolled and in good standing in such an approved program.

Upon approval of such application by the Board, the applicant shall take the oath of attorney and the Board shall recommend to the Supreme Court the admission of such applicant for the purposes herein stated; such oath, together with any other documents the Board deems pertinent, shall be sent to the Supreme Court which shall enter an appropriate order upon the limited admission of such applicant.

Practice of an applicant so admitted shall be limited to the clinical work of the particular approved course of study in which he or she is enrolled; no charge shall be made for any services so rendered. When such applicant ceases to actively participate in such program, the dean of the law school shall immediately notify the Washington State Bar Association and the clerk of the court so that the right of the applicant to practice may be terminated of record.

B. Limited Admission of Law Students Enrolled in Clinical Programs.

(1) Qualifications — The Applicant must:

Be a student duly enrolled and in good academic standing at an approved law school with legal studies completed amounting to not less than two-thirds of a prescribed three-year course of study or five-eighths of a prescribed four-year course of study, have the written approval of his or her law school dean or a person designated by such dean; and be enrolled in a program of an approved law school of this state involving clinical work in the practice of law.

(2) Procedure

(a) The applicant shall make his or her application on a form provided by the Washington State Bar Association, which shall conform to the requirements set forth in Rule 8B I. There shall be no fee for filing such application.

(b) The application shall give the name of the person who is to be the applicant's supervising faculty member. The application shall be signed by such faculty member, who, in doing so, shall assume the responsibilities of supervising faculty member set forth in Rule 8B(4) if the applicant is given a limited license as a Rule 8 legal intern. Such faculty member shall be relieved of such responsibilities upon the termination of such limited license or at such earlier time as he or she or the applicant shall give written notice to the Washington State Bar Association and the Supreme Court of the State of Washington requesting that such faculty member be so relieved. In the latter event another faculty member may be substituted as such supervising faculty member by giving written notice of such substitution signed by the applicant and by such other faculty member, to the Washington State Bar Association and the Supreme Court of the State of Washington.

(c) Upon receipt of the application, the Washington State Bar Association shall endorse thereon its approval or disapproval and forward the same to the Supreme Court of the State of Washington.

(d) The Supreme Court of the State of Washington shall issue or refuse the issuance of a limited license as a legal intern. The Court's decision shall be forwarded to the Washington State Bar Association, and the applicant shall be informed of the court's decision.

(3) Scope of Practice by Legal Intern under the Limited License.

A legal intern under this rule shall be authorized to engage in the practice of law, including appearance in the trial courts of this state in civil and criminal matters, as limited by the provisions of this Rule 8.

(4) Law Student Supervision:

(a) The supervising faculty member shall maintain direction and supervision over the work of the legal intern and shall assume personal professional responsibility for any work undertaken by the legal intern while under bis or her supervision. All pleadings, motions, briefs, and other documents prepared by the legal intern shall be reviewed by the supervising faculty member. When a legal intern signs any legal document, his or her signature shall be followed by the title "legal intern" and, if the document is prepared for presentation to a court or for filing with the clerk thereof, the document shall also be signed by the supervising faculty member. The law student intern, supervised in accordance with these rules, may engage in a limited practice of law under this rule where the client is financially unable to afford counsel and where the cause is not fee generating, except for specific programs which are approved by the Board of Governors.

(b) Supervision shall not require that the supervising faculty member be present in the room while the legal intern is advising or negotiating on behalf of a person, or while the legal intern is preparing the necessary pleadings, motions, briefs, or other documents.

(c) The supervising faculty member need not be present in the courtroom during the legal intern's appearance in matters before and cases tried in a trial court from the judgment of which there is a right of trial de novo on appeal, except in the representation of a defendant in preliminary criminal hearings. However, if the supervising faculty member is present, the legal intern may appear in the representation of a defendant in preliminary criminal hearings.

(d) A legal intern may not appear in any superior court proceeding without the presence of the supervising faculty member except in ex parte matters and other non-contested cases.

(e) A judge may exclude a legal intern from active participation in proceedings before the court in the interest of orderly administration of justice or for the protection of a client or witness, and shall thereupon grant a continuance to secure the attendance of the supervising attorney.

(f) No legal intern or supervising faculty member may receive a fee from a client for his or her services.

(5) Supervising Faculty Members – Requirements.

The faculty member under whose supervision an eligible law student does any of the things permitted by this rule shall:

(a) Be a member of the faculty of the approved law school of this state in which the eligible law student is enrolled.

(b) (i) Be an active member of the Washington State Bar Association who has been actively engaged in the practice of law in the State of Washington or elsewhere for at least three years prior to the time the application is filed; or

(ii) Be admitted to the limited practice of law under Rule 8A and have been actively engaged in the practice of law in another jurisdiction or other jurisdictions for at least 3 years prior to time application is filed.

(c) Have supervision over no more than ten (10) legal interns at any one time except when deviation for specific programs is approved by the Board of Governors.

(d) Be substantially available for the performance of his or her supervisory duties.

(e) Assume professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student't work.

(f) Assist the student in his or her preparation to the extent the supervising faculty member considers it necessary.

(g) Maintain an appropriate plan of indemnification covering supervising faculty members and students working under the supervising faculty member for malpractice liability arising under a clinical program.

Without prior approval of the Board of Governors of the Washington State Bar Association, no person shall be eligible to act as a supervising faculty member while disciplinary proceedings (following the service of a formal complaint) are pending against him or her or if he or she has ever been censured, reprimanded, suspended or disbarred.

(6) Term of Limited License.

(a) A limited license as a legal intern under Rule 8 shall not be granted for a period in excess of twelve (12) months.

(b) The approval given to a law student by his or her law school dean or his or her designee may be withdrawn at any time by mailing notice to that effect to the Clerk of the Supreme Court and to the Washington State Bar Association and shall be withdrawn if the student ceases to be duly enrolled as a student prior to his or her graduation or ceases to be in good academic standing.

(c) A limited license is granted at the sufferance of the Supreme Court of the State of Washington and may be revoked at any time upon the Court's own motion, or upon the motion of the Board of Governors of the Washington State Bar Association, in either case with or without stated cause.

Alternative Rule (4) (a) Indigency Clause Deleted.

(a) The supervising faculty member shall maintain direction and supervision over the work of the legal intern and shall assume personal professional responsibility for any work undertaken by the legal intern while under his or her supervision. All pleadings, motions, briefs, and other documents prepared by the legal intern shall be reviewed by the supervising faculty member. When a legal intern signs any legal document, his or her signature shall be followed by the title "legal intern" and, if the document is prepared for presentation to a court or for filing with the clerk thereof, the document shall also be signed by the supervising faculty member. ☐

Corporation, Business and Banking Law

By DENNIS SEINFELD

All practicing lawyers — whether or not Section members — should consider attending our Section's mid-year meeting in Richland from April 30 through May 2, 1976. From past experience, the site (Hanford House) is pleasant, the pool and weather warm, the golf course and tennis courts convenient, and the river adjacent.

If that doesn't convince you to attend, then perhaps we can induce you to take in the program as a sideline! Bert Weinrich as Section Chairperson and Claude Pearson as mid-year meeting chairperson, have put together a first rate program for general business lawyers as well as specialists. The general programs will be in the afternoon of April 30th and morning of May 1st. The specialty program will run on the afternoon of May 1 and morning of May 2, with the various specialties running concurrently. Attendants may choose any of the specialty programs and may wander back and forth. The schedule:

1. **General Program April 30th (1:30 to 5:00):**

A. Use of legal assistants and word processing systems in setting up a closely held corporation; post-incorporation check-list; and the effect of penalty taxes — by James Hilton of Seattle

B. Dissolution of a closely held corporation. Irwin Treiger will discuss the tax consequences to the corporation and its shareholders, and Robert Kaplan of Seattle will discuss the non-tax problems.

2. **General Program May 1 (9:30 — noon):**

C. Buying out a shareholder in a closely held corporation; stock redemptions and repurchase agreements; and income tax consequences of stock redemption of Section 306 stock — by James Workland of Spokane.

D. Maintaining control of the closely held corporation; and restrictions on the transfer of shares — by James Morton of Tacoma.

E. Employee stock option plans (ESOP) — by James Gallagher of Tacoma

3. **Specialty Programs (May 1st, 1:30 — 4:30, and May 2nd, 9:00 — noon — all speciality programs will run concurrently):**

A. SEC and State securities:

(1) Private placements:

(a) Limited offerings — by James E. Newton of Seattle

(b) Private placements, integration and responsibilities of attorney — by Robert S. Ivie of Seattle.

(c) Private placements and resales of restricted stock (federal) — by Jerome B. Whalen of Seattle.

(d) Limited offerings and private placements (state) — by Ralph R. Smith of Securities Division

(2) Mergers and other business acquisitions:

(a) Non-registered acquisitions under private placement exemptions — by Tom Alberg of Seattle

(b) Registered acquisitions under Rule 145 and stock for stock exchanges — by Allen

Vandevert of Weyerhaeuser

(c) Resales of acquisition stock, negotiation of contract provisions, and resales by controlling persons – by Mike Liles, Jr. of Seattle

(d) Major enforcement problems, force cash mergers, spin-offs, and insider trading – by N. Michael Hansen of the SEC Seattle office

B. *Special Problems of Liability of Directors, Officers and Attorneys for Financial Institutions:*

(1) Bonding and insurance problems; availability and types of insurance coverage for officers and directors – by Thomas J. Jochums of Marsh & McLennan Insurance Specialists of Seattle

(2) Lawyers as directors of financial institutions; standards of care, duties and liabilities of officers, directors and attorneys – by Louis Pepper of Seattle

(3) Specific cases of officers and directors liability – by D. Gordon Willhite of Seattle

(4) Regulation of financial institutions by the comptrollers office – by Thomas H. McLachlen comptroller of Currencies of Portland Regional Office

C. *Special Problems of Agricultural Law Practice:*

(1) Income tax planning and pitfalls; income and expense matters – by Roger P. Lyle, CPA of Spokane

(2) Valuation of farm corporations for estate tax and gift tax purposes; valuation of minority interest; valuation of stock versus underlying assets; use of 303 redemption – by Norman D. Brock of Spokane

(3) Retirement plan for farmers and ranchers (profit sharing, pension, ESOPs, Keough, IRAs) – by Steve Berde of Haber and Stoler, Inc. of Spokane

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REGISTRATION FORM – Please print or type

MAIL TO: Corporation, Business & Banking Law Section
Washington State Bar Association
505 Madison, Seattle, Washington 98104

Enclosed is a check for $__________
covering ________ registration fees at $35.00 per person for the seminar on 1976 Corporation, Business & Banking Law.

Name (s) ____________________

Address ____________________
(City and zip code)

(Please make check payable to Washington State Bar Association)

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I enclose a $5.00 check for my Annual Membership Fee in the Section on Corporation, Business & Banking Law.

Name ____________________
Mailing Address ____________________
____
(city and zip code)

(4) Panel discussion — led by Roger Underwood of Spokane

We have a number of general activities planned during this weekend. There will be a special art exhibit arranged by the Jaid Art Studio, featuring a broad spectrum of contemporary art; a no-host cocktail party Friday evening and a wine tasting party on Saturday evening; and a no-host Columbia River cruise for spouses on Sunday.

We will of course provide all registrants with a comprehensive practice manual of permanent and almost indispensible value to the attorney counseling business and corporate clients, prepared by the panel members and covering the program.

We hope to have a good turn-out, hence space at the Hanford House will be limited. Please send in the following form to register as quickly as possible. Registrations will be handled on a first-come — first-served basis.

See you in Richland!

TAXATION

By MALCOLM KATZ

Important Federal Changes

For the fourth time in the last fifteen years, the widow payment Plan of Graybar Electric Company has been the subject of an appellate decision which goes to the criterion for determining whether a widow payment is a non-taxable gift or taxable consideration or some other kind of taxable gain. Under Graybar's plan, the company's board had the right to make payment to either the estate of a deceased stockholder or its beneficiary for five years in amounts representing the cash dividends which would have been paid on the stock, had the stock not been redeemed by the company upon the stockholders death pursuant to a provision in the subscription agreement. The plan stated that a recipient had no right to a payment, that the payments were at the discretion of the board, and provided for a committee to arbitrate in certain situations.

In the first of these cases, the Second Circuit in 1959 found that the payments were not compensation for the services of the deceased employee, and this holding was relied upon by the Ninth Circuit in 1972, which held that the payments were a non-taxable gift to the widow. What was important, said the Ninth Circuit, was that the payments were made to the wife and not the estate, the fact that the company had no obligation to make the payment, the fact that the company derived no economic benefit from the payment, the fact that the widow had never performed any services for the company and finally, the fact that the services of the deceased employee — stockholder had been fully compensated for during his life. In applying these criteria, the Ninth Circuit indicated that it was following the Supreme Court's 1960 holding in *Commissioner vs Duberstein.*

However, the Fifth and the Fourth Circuits in 1975 held that the Ninth Circuit had misinterpreted *Duberstein*, and that the only question for gift purposes was whether the payment proceeded from a "detached and disinterested generosity ... out of affection, respect, admiration, charity or like impulses." The additional facts taken into account by the Ninth Circuit, in other words, should not have been considered, but rather, only the intention of the corporation.

Wholly apart from the resolution of this conflict at the appellate level, the decisions of the Fifth and Fourth Circuits make the inclusion of the language referred to in *Duberstein* necessary in any corporate minutes providing for a widow payment, together with, of course, the factors relied upon by the Ninth circuit in *Harper vs. United States*, 454 F. 2d 222. The advisability, of course, of adopting a plan similiar to Graybar's is also questionable in light of this appellate conflict. And as for that conflict itself, it may be reconcilable on the theory that in ascertaining and in finding out the corporation's intent, the factors relied upon by the Ninth Circuit in *Harper*, together with others, may well be taken into account, and that such factors need not be considered as other or as additional factors, which have to be considered along with the corporation's intent. □

JUDICIAL COUNCIL REPORT
By KARL B. TEGLAND
Judicial Council Attorney

Proceedings Challenging Personal Restraint

The new Rules of Appellate Procedure, as set forth in the Feburary 13, 1976 edition of Washington Reports, will go into effect July 1, 1976. These new rules will replace the rules captioned ROA and CAROA and will govern all proceedings in the Supreme Court and Court of Appeals. The new rules also supersede Superior Court Criminal Rule 7.7, Post-Conviction Relief. I would like to take the opportunity in this column to explain why CrR 7.7 has been rescinded and what the procedure will be under the new rules.

Under present law there are two appellate court proceedings which may be used to challenge restraint on personal liberty — habeas corpus under ROA I-56 or CAROA 56 and post-conviction relief under CrR 7.7. CrR 7.7 was a well-intentioned effort to respond to criticism by the American Bar Association that Washington lacked a simple procedure for seeking post-conviction relief. Unfortunately, several problems soon became apparent under that rule. It did not define the relationship between CrR 7.7 and habeas corpus. It did not define who the proper respondent was. The requirement that all cases be referred to the Superior Court, even those which the Court of Appeals could decide on the record, proved cumbersome. It has taken a considerable amount of appellate litigation to resolve these problems, and cases involving an interpretation of the rule are still pending in the Supreme Court.

New rules 16.3 through 16.14 define a single procedure called a personal restraint petition which will supersede both post-conviction relief and habeas corpus in the appellate courts. By unifying the two procedures, confusion over which remedy to seek first is eliminated. *Compare Holt v. Morris*, 84 Wn.2d 841, 529 P.2d 1081 (1974).

The procedure defined by the new rules is, in most respects, the same as that defined by CrR 7.7, as modified by *Wright v. Morris*, 85 Wn.2d 899, -P.2d- (1975). The personal restraint petition is filed in the Court of Appeals. Rule 16.5. A form of petition is set forth in Rule 16.7. The proper respondent is the person or agency responsible for the proceeding at the time the alleged error occurred. Rule 16.6. This will ordinarily be the county prosecutor, as is the case under CrR 7.7, and not the Attorney General, who customarily responds under present habeas corpus rules. *See Wright v. Morris,* above. Contrary to the old rules, a written response is required in every case. Rule 16.9. Briefs may be, but need not be, filed. Rule 16.10.

Under CrR 7.7, the Chief Judge of the Court of Appeals could do one of two things with an application for post-conviction relief. The Chief Judge would dismiss the application if it had no basis in fact or law, or transfer it to a superior court for determination. The new rules provide for three alternatives. If the petition is frivolous, it is dismissed. If the petition is not frivolous and can be determined on the record in the appellate court, the petition is referred directly to a panel of appellate court judges for determination on the merits. If the petition cannot be determined solely on the record, the petition is sent to the Superior Court for a reference hearing to determine disputed facts. Rule 16.11.

The most significant departure from CrR 7.7 is that no decision on the merits is made by the superior court. The purpose of the reference hearing is only to determine necessary facts. After findings of fact are entered, the file is returned to the Court of Appeals for a decision on the merits. Rule 16.13.

The new rules apply only to proceedings initiated in the Supreme Court or Court of Appeals. Statutory habeas corpus proceedings in Superior Court are unaffected by the new rules.

□

U.W.

Ninth Annual Pacific Coast Labor Law Conference

The Ninth Annual Pacific Coast Labor Law Conference will be held May 13 and 14, 1976, at the Seattle Center. Sponsors of the Conference are the Labor Law Section of the Seattle – King County Bar Association and the University of Washington School of Law.

Speakers include Betty Southard Murphy, Chairman of the National Labor Relations Board, who will talk on "The Impact of Columbus Printing Pressmen on the Collyer Doctrine and Interest Arbitration." Jerry Wurf, President of the American Federation of State, County and Municipal Employees, will also address the Conference.

The program will feature panel discussions on recent developments under the National Labor Relations Act, collective bargaining trends in the public and private sectors, developments in discrimination law and new directions in arbitration.

For further information, contact the Office of Short Courses and Conferences, Lewis Hall DW-50, University of Washington, Seattle, Washington 98195; phone (206) 543-5280.

Gonzaga

Annual Heidelberg Moot Court Competition

The finals of the Gonzaga traditional Linden Cup Intramural Moot Court Competition were held Saturday, March 20, in the law school. Over 20 teams entered the competition.

Judges of the State Supreme Court served as judges for the final arguments.

Members of the Supreme Court, the Federal Bench from both Eastern and Western Districts, and the Spokane County Superior Court were invited by the law school faculty for dinner at the Cataldo Dining Room, on campus. Following the dinner, the guests were treated to the annual Heidelberg hosted by the Student Bar at the Student Union Building with this annual bash out of the way, the students and faculty can successfully plunge through the final two months of the school year with renewed vigor and school spirit.

University of San Diego

Paris Seminar Features Immigration and Energy Law

The fourth Institute on International and Comparative Law in Paris, France, features a 3½ week course on United States Immigration Law taught by Professor Charles Gordon, former Chief Counsel of the Immigration and Naturalization Service and co-author of the principal treatise in the field. There are also 2-week courses in International Energy Law by Professor Dominique Carreau of the University of Paris and the University of Michigan, and in Rural Development Law by Professor Harrison

Dunning of the University of California, Davis.

Each seminar is conducted in English and participants will be introduced to the legal life in Paris.

Lawyers who can spare 5½ weeks can secure a full introduction to International and Comparative law subjects. Professor Stefan Riesenfeld will teach Comparative Law, with emphasis on private law subjects; Professor Andreas Lowenfeld of NYU, former Deputy Legal Advisor to the State Department, will teach Public International Law by the problem method focusing on recent international crises; and Professor Ralph Folsom of the University of San Diego will teach International Trade and Investment Regulation. The latter three courses run June 29-August 7.

For further information, contact Professor Ralph H. Folsom, School of Law, University of San Diego, Alcala Park, San Diego, California 92110.

The Institute is co-sponsored by the University of San Diego, the Institut Catholique de Paris, the Ecole Supérieure des Sciences Economiques et Commerciales and the Université de Paris I (Panthéon-Sorbonne).

Board of Governors
Tentative Meeting Schedule

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

Twenty Years Ago

The bar was very active as indicated by Editor Rupp.

Births

Clarkston: At a meeting of the Asotin County Bar, C. Orno Shoemaker received a cut on his nose. This seemed to be remarkable because it was the only casualty of the evening. The location or severity of the cut was not mentioned.

Mt. Vernon: Superior Court Judge Charles F. Stafford was given an honorary doctor of law degree. It was suggested that he be called doctor from now on.

Tacoma: Andy Garnes and Ray Graves combined for greater harmony and capacity. It seemed to be expected that they would thus garner more also.

Richland: Eugene Maher of New York was announced as the resident counsel of the General Electric Company and opened an office with Lucile Lomen.

Seattle: State Supreme Court Justice Frederick G. Hamley appointed to the United States Court of Appeals. Michael K. Copass appointed to the Superior Court, King County. F. Lee Campbell became a partner in the firm of Karr, Tuttle & Campbell. John Keough resigned as law clerk to District Judge John C. Bowen to become associated with David J. Williams. Orly J. Sorrel became associated with Morrissey, Hedrick & Dunham. Jack Youngberg and James T. Johnson formed the new firm of Youngberg & Johnson. Walter J. Reseburg, Jr., Winston C. Ingman and Lawrence E. Therriault formed the law firm of Reseburg, Ingman and Therriault. Bradley T. Jones returned to the law firm of Howe, Davis, Riese & Jones. Gordon Clinton assumed the position of Mayor and Allan Pomeroy returned to his law practice.

Kirkland: King and King moved their offices from the Harris Building to the Journal Building.

Crossed the Bar

Oliver C. McGilvra, pioneer Seattle attorney. He bequeathed to the Children's Orthopedic Hospital and to the Hearing and Speech Center $20,000 each and to the Pioneer Association of Washington $1,000. Mr. McGilvra was a very colorful and capable Seattle lawyer.The early history told the story of how he hired two Indians to carry him by canoe from Olympia following an appearance before the Supreme Court.

David J. Williams

Board Elections Due

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

Members of the Board of Governors of the State Bar to represent those districts are due to be elected this year. Expiring in September are the three-year Board terms of Richard H. Riddell, First District, and John E. Heath, Jr., Fifth District.

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

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

The petition must be filed in the Bar Office by 5 p.m., Saturday, May 31, 1976.

In Memoriam

E. W. Allen, 92, of Seattle, died March 15. He was admitted to the Bar in 1909.

Michael M. Corless, 39, of Sunnyside, died February 5. He was admitted to the Bar in 1964.

Richard G. Jeffers, 65, of Wenatchee, died February 7. He was admitted to the Bar in 1934.

Fred R. Lubbe, Jr., 50, of Burlington, died February 2. He was admitted to the Bar in 1952.

Discipline Action on Hart

Richard W. Hart, Bellevue, was suspended by the Supreme Court pursuant to Rule 9.1 of the Discipline Rules for Attorneys on January 16, 1976.

Notices

For Sale: Rabkin & Johnson, Current Legal Forms, complete and up-to-date. Call (206) 693-5848, Vancouver, Wash.

For Sale: Collier on Bankruptcy. Up to date. $750.00 value – $425.00 Cash. Call 624-2832, Seattle.

Information Needed: Regarding any will of the late Chester E. Bielby executed in 1968 or later. Please call or write William F. West, P.O. Box 144, Kenmore, Wash. 98028. Phone: 486-0718.

IBM Dict. Equipment: Model 233 transcriber, with hands-off dictating capability; Model 211 transcriber. Includes belts, microphone, ear jack, foot pedal. $400.00. Call 522-6819, Seattle.

For Sale: 1 Rabkin and Johnson's Current Legal Forms with Tax Analysis, complete (Release No. 29). 322-8400, Seattle.

For Sale: Up to date set of USCA. Make offer. (509) 837-5302, Sunnyside.

For Sale: Colliers Bankruptcy Forms Manual; Colliers Bankruptcy Manual; 6 volumes, supplements up to date. $150 or best offer. Call Dillon Jackson, (206) 822-9281.

For Sale: Complete USCA with current pocket parts: Business Organizations, 33 volumes, Matthew Bender. 622-3280, Seattle.

Calendar

April 2 & 3	2nd Annual "Defense of a Criminal Case" Seminar presented by the Young Lawyers Section, Seattle/Olympic Hotel
April 30, May 1-2	Corporation, Business & Banking Law Section Mid-Year Meeting and Seminar, Richland/Hanford House
May 3, 4, 5	National Conference on Law Office Economics and Management. Information: Write Continuing Legal Education, Centre for Continuing Legal Education, University of British Columbia, Vancouver, B.C. V6T 1W5 or telephone: (604) 228-2181, local 213.
May 28	*Practice Under the New Criminal Code;* 1-6 p.m., Greenwood Inn, Olympia; Mark Vovos, Spokane, Chairman.
June 4	*Practice Under the New Criminal Code;* 1-6 p.m., downtown Hilton Hotel, Seattle.

Lawyer Placement

1. The Washington Legal Services Program needs attorney in the capacity of STATE-WIDE LITIGATION COORDINATOR. Complete details of previous experience and references to be included in reply. Send to: Stephen M. Randels, Director, Northwest Washington Legal Services 1712 1/2 Hewitt Avenue, Everett, WA 98201

2. LAW FIRM located in a medium-sized Eastern Washington community is seeking an associate for the general practice of law with some emphasis on trial work – SUPERIOR ACADEMIC RECORD PREFERRED. Write to: Washington State Bar Association, P.O. Box 88, 505 Madison, Seattle, WA 98104

3. Resumes for the position of County Prosecutor will be accepted by the Stevens County Board of Commissioners. Salary budgeted for 1976 for this position is $14,300.00. Mail resume to: County Commissioners, P.O. Box 191, Colville, Washington 99114. Stevens County is an EOE.

4. Part time position filing loose-leaf legal materials. Experienced, including U. of W. Law Library, 12 years. References available. Moorfield Storey AT 3-2160, Seattle.

5. Formerly two-man, busy firm (now one-man, busy firm, because of death) located in Central Washington agricultural community looking for attorney with general practice experience, including corporate and probate work. (509) 837-5302, Sunnyside.

6. The University of Washington Law School invites applications for a part-time clinical Lecturer position during summer quarter 1976.

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