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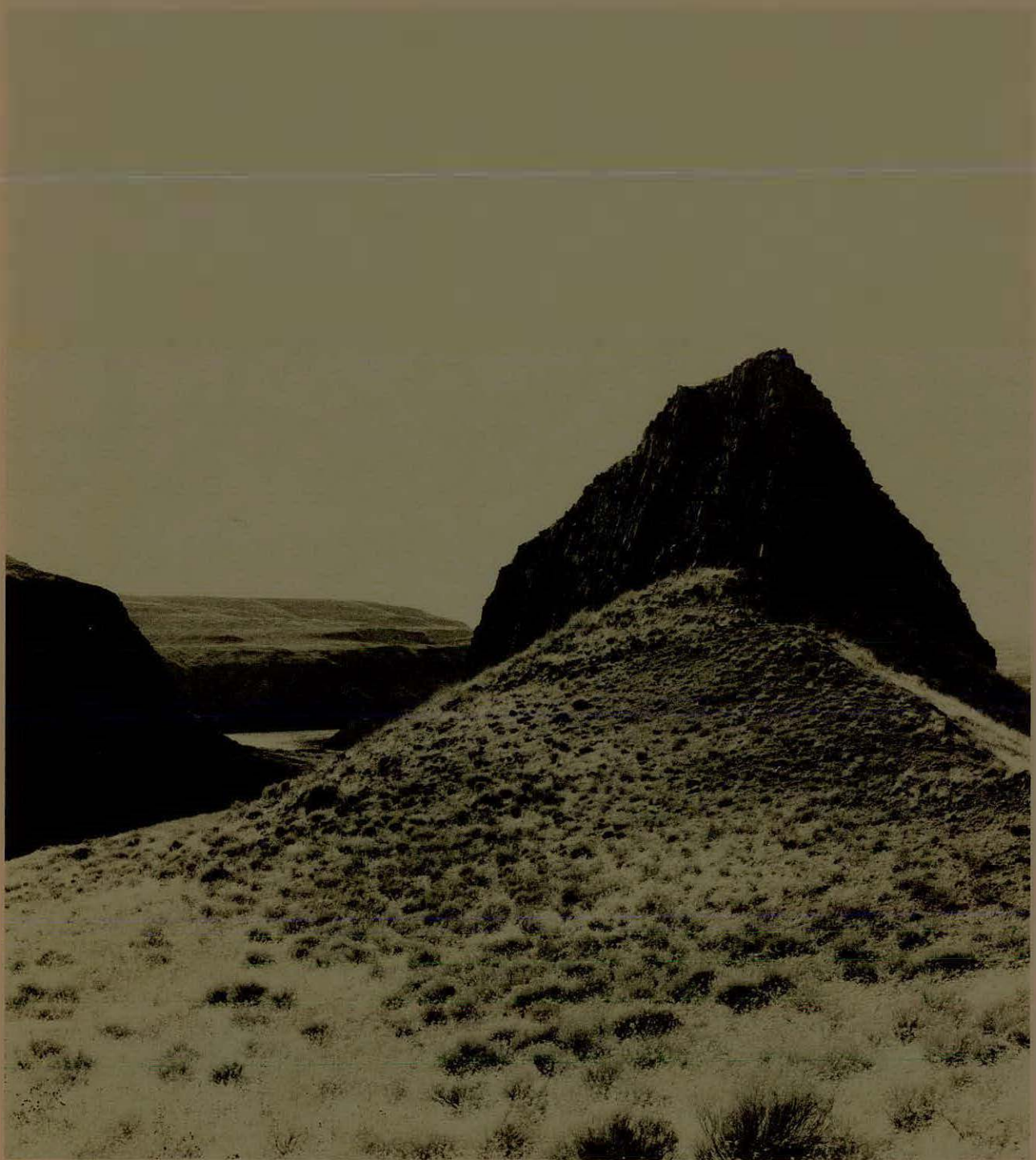
February, 1977

WASHINGTON STATE BAR NEWS



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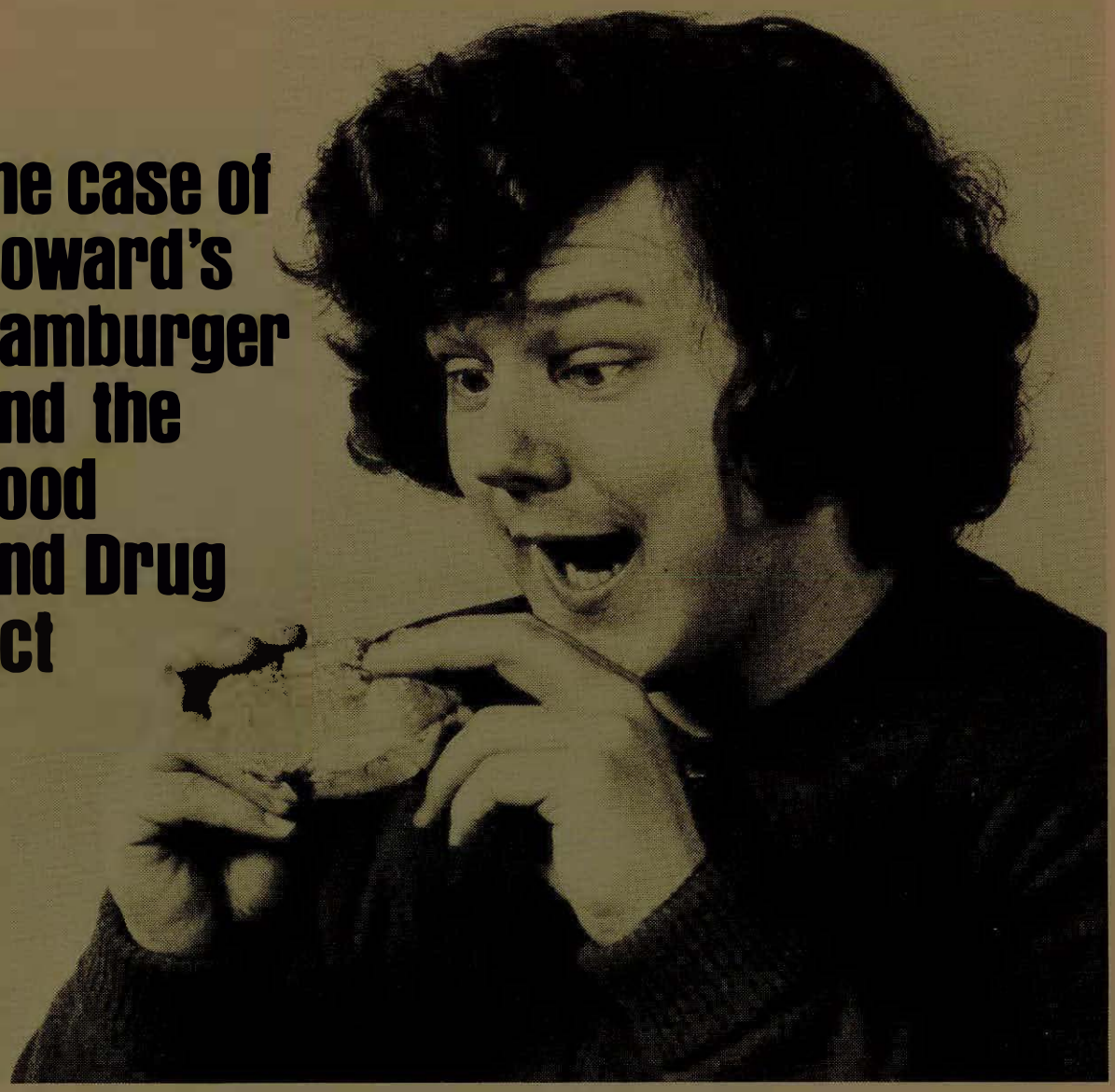
the case of Howard's hamburger and the Food and Drug Act



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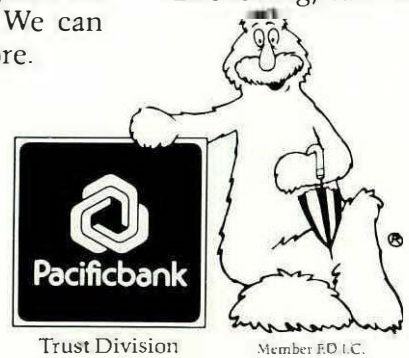

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Volume 31, Number 2
February, 1977

WASHINGTON STATE BAR NEWS

FEATURES

IN THE NEWS

DEPARTMENTS

Our Cover

Washington lawyers practice in a beautiful state and, from time to time, the *Bar News* will feature photographs of the state on its cover. This photograph of the Snake River was taken by Paul Macapia while following more than 8,000 miles of the Lewis and Clark Trail in preparation of *Lewis and Clark's America, Vol. 2, A Contemporary Photo Essay*, published by the Seattle Art Museum last year.

Kudos For Good Trial Work

Editor:

In line with the policy that this department of the Superior Court has had for many years, enclosed find letters of outstanding performance in eight cases tried before the undersigned, four being in the criminal area and four in the civil area, pursuant to letters attached.

My personal philosophy is that "commending in public and condemn very rarely if necessary in extreme privacy." I sincerely believe it might be of help to the younger members of the bar to know those top trial lawyers in the community so their characteristics may be emulated.

HORTON SMITH, Judge,
King County Superior Court
Seattle

The lawyers cited by Judge Smith are King County Deputy Prosecutors Michael Cohen (now in private practice), Diane Dray, Diane Geiger, Ralph Maimon, Richard Lee Phillips, and Douglas Whalley; Richard Clark, Bernice Jonson, and Earl Lasher of Seattle; and Richard Conrad of Renton. – Ed.

About that Annual Meeting in Hawaii . . .

Editor:

The December *Bar News* (received 12/28/76) reports on the Board of Governors November 12-13 conclave at Port Ludlow, with the old bugaboo of an annual meeting to be held in Hawaii (now 1980) again raising its ugly head. I have no objection to the Board, or a Bar section, or a Bar committee going to Hawaii, if it is felt justified; and no objection to our annual meetings being in Portland, or Vancouver, B.C.; but the annual meeting for all members should not be that far removed, and I would hope that some successive board, before 1980, would exercise its prerogative to cancel the proposal.

JOHN HUNEKE
Spokane

Court Rules

Editor:

I have been very impressed and pleasantly surprised with the simplicity of the new Rules on Appeal. If my personal analysis is correct, it appears that this will return the appeal to the attorney who is handling the direct litigation, rather than specialists created because of hyper-technical rules.

I may be stepping on some judicial toes here, but it appears to me that now that we have done away with CAROA and ROA and simply have RAP, we might be able to further simplify our GR, CAR, CJC, CPR, APR, DRA, SAR, AR SPR, CR, MPR, JAR, JCR, JCrR, JTR and JUcR.

For starters I would like to see the Justice Court Rules simplified so that we really can use justice courts more effectively. Quite frankly, there is enough difference that I always feel out of place in justice court and yet it seems to me it should be a microcosm of the superior court.

Why not just do away with separate civil justice court rules altogether, except to limit jurisdiction?

J. R. SHERRARD
Bainbridge Island □

Editor's Page

They're Taking That Exam Again

Three hundred and sixty-five people registered to take the bar exam this month, a record for February and a greater number than those taking the July exam 5 years ago. A substantial majority of these people are expected to become lawyers this Spring, and thus be certified by the bar association and the Supreme Court to be competent to try any case, draft any contract, represent any person and, indeed, to handle virtually any legal problem imaginable — or at least to give it a good try.

As members of a profession responsible for its own "quality control", we place a great deal of faith in the bar exam as a measure of professional competence. The degree of our faith is illustrated by the operation of APR 9 which requires that a legal intern's supervising attorney be present for the intern's first two trials, one of which must be a jury trial. Even then, such trial experience is limited to courts where there is a right of trial de novo. Contrast the experience of a Rule 9 intern with that of one who has passed the bar exam: such a person not only immediately may try jury and non-jury cases without supervision, but also may practice in any court, from the Superior Court to the United States Supreme Court.

AFTER THIS MONTH'S BAR EXAM, the multi-state bar exam will no longer be given in Washington. As a final look back, consider this question: Which of the following legal principles is best illustrated by the sign pictured above?

(a) Res ipsa loquitur.
(b) "Parking only. No trespassing without permission."
(c) The rule in Shelley's case.
(d) Violators will be towed.

A re-examination of bar admissions procedures is taking place in this state and nationally. The dramatic increases in the cost of malpractice insurance is a factor which has sparked interest in seeking ways to insure that the licensed practitioner is competent. In this connection, the Washington bar has become the fourth in the country to implement a mandatory continuing legal education program for its members. Another factor which has directed attention to the bar examination here is the high fail rate among certain minority groups which has raised questions as to whether the bar examination discriminates on some basis other than competence to practice law.

There is good reason to believe that some change is forthcoming in the manner in which our state licenses lawyers. The Board of Governors is expected to receive an interim report this month from a committee which has been studying the minority admissions issue. Moreover, a Young Lawyers Section committee is expected to report to the Board next month concerning its study of professional admissions procedures which was undertaken to evaluate alternatives to the bar examination. That committee offers an article summarizing some of its findings to date at page 10.

In view of these developments, members of the bar should make their views about admissions procedures known to the Board of Governors. Moreover, letters or articles on this subject would be welcomed by the *Bar News*. Is there any practical alternative to the bar exam? There is a real need for concrete data and the documentation of opinion about admissions procedures.

ALSO IN THIS ISSUE: Michael L. Cohen, former King County deputy prosecuting attorney, Fraud Division, offers the first part of an article to be concluded next month, "Criminal Investigatory Proceedings in Washington" (p. 29) . . . Dan P. Danilov presents an update concerning recent major changes in immigration laws and regulations (p. 35).

JVW

The President's Corner

Our Board of Legal Specialization has twice recommended (August, 1976 and January, 1977) to the Board of Governors the adoption of a two-tiered plan containing both Self-Designation of Specialties and Certification of Specialists. In August, the Board approved the plan in principle, but declined to implement it. In January, the Board continued the matter on its agenda until after the U.S. Supreme Court rules this Spring on the *Bates and O'Steen Case* (which involves advertising by lawyers).

All of the members of the Board of Governors are deeply concerned with this specialization problem. The Board is sharply divided on the best way to handle it. This issue is vital to the profession. It can have a major impact on the practice of law. Before we move, we want to be sure we are doing the right thing.

California and Texas have opted to go the route of certifying specialists. Since 1973, California has been certifying specialists in the fields of taxation, criminal law and workmen's compensation. By last summer, California had certified about 1,800 specialists, of whom 75% were "grandfathered" in. Both California and Texas are moving slowly and still experimenting with certification of specialists.

New Mexico and Florida have taken a different tack. They permit their lawyers to list in the yellow pages of the telephone book the areas of law in which they will accept clients (limited to two or three specialty areas, plus "general practice" if the lawyer wishes to so list himself). There is a proviso that the lawyer must have been in practice for a specified period and must work at least a specified percentage of his time in each specialty area. In New Mexico, only 7% of the lawyers participate in this self-designation program, but Florida had a whopping 60% participation during the plan's first year of operation there (1976). Florida only requires three years of practice and "substantial experience" (as yet undefined) in each specialty area. The Florida lawyer may designate up to three fields of law in which he will accept clients, the fields chosen from a list of 21 fields of law now approved by the Florida Designation Committee. To redesignate, the lawyer must take at least 30 hours of CLE courses in each of his specialty fields each triennium.

Arizona, South Carolina, Colorado, Connecticut, Idaho, New Jersey and Oregon have all prepared — but not yet implemented — specialization programs. Of these seven, four appear to be going the Texas-California certification route and three the Florida-New Mexico self-designation route.

Among the unanswered questions with which your Board of Governors is wrestling are these: As to certification of specialists — is it fair to younger lawyers to grandfather in the older, more experienced practitioner? How long must one practice in the field before being eligible for certification? What percentage of the lawyer's work must be concentrated in his specialty field? How do you test a trial lawyer's expertise? In how many fields may one lawyer be certified? Should the certified lawyer be permitted to accept retainers in other fields of the law, or should he be required to restrict his practice to the one or two fields in which he is certified?

As to self-designation — if the program is adopted should the state bar (as does Florida's) insert a statement in the yellow pages that self-designation merely indicates the fields of law in which a lawyer primarily practices and does not necessarily imply greater expertise in that or those areas of law than any other lawyer may have? Should "general practice" be one of the areas of law which may be designated? If a lawyer designates the fields of "probate, corporate

and personal injury'' law, will potential clients infer that lawyer has little interest in the $500,000 real estate transaction or the $1,000,000 divorce? Or vice versa? If the lawyer designates only ''general practice'', will potential clients prefer the lawyer who has designated the field of law in which their particular problem lies?

Will specialization in any form be the death knell of the general practitioner, or will he remain viable as in the medical field today? Will specialization tend to draw clients from the smaller towns to the nearby cities and from those cities to the major metropolitan centers?

The justification urged for specialization programs is fourfold: (1) It assists the client in choosing a lawyer who is interested in the client's particular problem. (2) It tends to provide better services for the client at a lower, or at least no higher, cost. (3) The specialist can be more efficient, more productive and earn a higher income without increasing the cost to the client. (4) It is better to have a rational bar-controlled specialization program than Court-mandated, unrestricted advertising by lawyers.

It is this last argument which caused the Board of Governors to postpone action on specialization until the Supreme Court acts in the *Bates and O'Steen* case. The Court may not authorize lawyer advertising. And, if threatened court action is to be an argument in favor of specialization, shouldn't we wait a few weeks to ascertain the rules under which we will be operating before plunging ahead? In the interim, the members of the Board of Governors will be attending the Western Bar Conference and learning from bar leaders of some twelve to fifteen states how their jurisdictions are attacking this problem. That information may assist in forging a concensus on the Board.

The Board of Governors is fully aware of its responsibilities to the profession. Once the Board settles on a plan, if it does, it will probably seek your approval either in a vote by mail or at the September convention. While we are still deliberating on specialization, please express your views to the Governor from your district. Your suggestions will be most welcome.

Richard H. Riddell

TO WHOM THE THANKS ARE OWED

By **JOHN J. MICHALIK**
Director of Continuing Legal Education

I think it more than appropriate to use this space to call attention to the real, and at times unsung, heroes of continuing legal education: the scores of attorneys who give unstintingly of their time, effort and knowledge on behalf of the State Bar Association's CLE program.

Participation in a CLE seminar is in essence a two-step process. Initially, of course, a seminar participant devotes a considerable amount of time to preparation, not only of his or her oral presentation but also to the research and writing of a portion of the seminar manual. This latter activity is a monumental task in and of itself — and the difficulties are often compounded by stringent printing deadlines. Each participant also devotes a substantial amount of time to planning meetings, numerous telephone conferences and the copious correspondence necessary to present an integrated and cohesive program.

Preparation of course leads to presentation. In most instances, State Bar Association seminars are presented in from two to four locations in the state, and, while an individual attorney may be directly responsible for only one hour of lecture at each of those presentations, the time commitment is far greater when travel time and inconvenience are taken into account.

"Inconvenience" may be too mild a word to use in describing some of the tribulations seminar speakers have faced. We have occasionally "lost" a speaker because of unforeseen problems such as the unexpected length of trial or some other necessary court appearance. On the other hand, I could recount numerous instances of genuine personal and physical sacrifice by seminar speakers bound and determined to carry on. For example, I am reminded of the seminar chairman who awoke on the morning of a presentation in Olympia to find that he had contracted the flu in its most discomfiting form. He nonetheless made the drive from Seattle and delivered a superb presentation. In another instance, a dislocated knee failed to prevent a speaker from delivering, while standing, a one-hour lecture. Finally, I think of the plight of the speakers who participated in the recent Trial Advocacy III program in Spokane. That program was held in December at a time when flights out of Sea-Tac were, to say the least, unpredictable because of a continuing fog problem. To insure their presence in Spokane, the Seattle based speakers endured a nine-hour train ride — which brought them to Spokane near midnight. Unfortunately, the troubles were not over — there were no cabs available. Undaunted, the speakers made the journey to their hotel on foot and, somehow, turned out bright and early the next morning for the program.

The involvement and commitment of our seminar participants is all the more remarkable when consideration is given to the fact that such participation is voluntary. No member of the Washington Bar is paid for services rendered in developing and presenting State Bar seminars. Often such participation leads to a financial loss when one takes into account the billable time that is sacrificed to seminar preparation and delivery. I at times hear the observation that most lawyers participate in CLE programs for the "exposure." That may be true in some cases but that fails to explain the involvement and interest such individuals exhibit not only in their own portion of the program but also in the development of the presentations of their fellow speakers. In the final analysis, the true motivation for CLE program participation seems to be a combination of a number of factors, including a strong sense of professional responsibility, honest commitment and a desire to learn and improve themselves. In the latter connection, I have been told by more than one seminar speaker that those who learn the most from a CLE seminar are those who prepare and present it.

Neither I nor all the members of the bar collectively are capable of offering sufficiently adequate thanks to these individuals. I will assume, however, to offer such thanks at this point — however inadequate the expression may be. □

Is the Bar Exam Good Enough?

By **PHILIP H. BRANDT,**
C. JAMES JUDSON,
KENNETH B. RICE and
ROBERT H. WHALEY

The WSBA Board of Governors has asked the bar association's Young Lawyers Section to investigate alternative methods by which applicants might be screened for and admitted to the bar. The Young Lawyers Section has, in turn, appointed a committee consisting of the four authors of this article to gather information about mechanisms used by other professional associations to admit new members. This article is a brief summary of the data which the committee has gathered and is intended as a catalyst for discussion within the bar association regarding the advisability of changing the bar's admission procedures, as well as the advantages and disadvantages of any specific alternative.

The thoughts expressed in this article are not a formal report by the committee nor do they in any sense represent the thinking of the Board of Governors. It is anticipated, however, that the committee will make report to the Board of Governors next month and that the Board shortly thereafter will consider the question of altering examination and admittance procedures.

THE COMMITTEE'S INVESTIGATIVE EFFORTS.

Early in its investigative process the committee perceived that the examination and admittance procedures could be broken down into four groups:

1. Automatic admission without examination assuming that certain law school education standards are met.

2. Admittance by successful completion of a written exam (the present procedure).

3. Admission on the basis of practical, on-the-job experience (an apprenticeship program).

4. Admittance on the basis of an additional educational requirement beyond law school, which education likely would be practice — rather than legal theory — oriented.

Obviously, these groupings are quite artificial for several reasons. An admissions mechanism could involve two or more of the above groupings. Witness the requirements for certification as a public accountant, which involve certain college education minimums, a specific period of practical employment, and successful completion of a written examination. Also, the distinctions between the groupings are sometimes fine. For example, a legal clerkship program under Rule 9 is thought to be of educational benefit; this is the same theoretical basis for a Rule 8 clinical education program. Yet both are apprenticeship programs.

Nevertheless, we feel that most methods for bar screening and admission will fit or can be squeezed into one or another of the above categories. Keeping these alternatives in mind, the committee contacted bar associations and other professional associations around the country and in Canada to determine the type of admissions

procedure used by each. There is not space here to summarize the procedures utilized by each of the 50 state bar associations, as well as the many other professional organizations, but some representative procedures will be discussed here.

CRITERIA FOR A BAR ADMISSION MECHANISM.

The primary goal to be served by any mechanism for screening applicants to the bar is competence. Clients are entitled to be represented by a competent lawyer and it is the primary function of an admissions program, and in fact of the Washington State Bar Association itself, to ensure that all levels of membership of the bar meet certain competency standards. Any mechanism for screening admission to the bar should be founded on a realistic definition in a reliable fashion to those seeking admission.

A screening program also should be fair. It should admit all of those who have the necessary competence and should exclude from membership all those who do not have the necessary competence. It should be administrable without excessive cost, particularly because the costs of the program would in all likelihood be borne by applicants for admission. It should not discriminate against any group of potential applicants, either on a geographic basis in terms of unreasonable residency requirements or higher fees for out-of-state applicants, or on the basis of race, age or other factors unrelated to practice standards. Inasmuch as the legal profession is obligated to serve all constituencies within the state, a screening process should allow representation within the legal profession of all significant constituencies (geographic, racial, age, etc.) in the state. Other criteria readily will be apparent to the reader; however, important as all of these criteria are, the committee placed overwhelming importance on the requirement that a screening process guarantee competency to the potential client.

CONTINUED RELIANCE ON BAR EXAMINATION

The bar association might continue to rely primarily upon the bar examination as the principal mechanism for screening applicants for admission to practice. The bar examination is tried and true. Virtually all of the lawyers practicing in the state have been admitted on the basis of demonstrated competency according to bar examination standards. At least historically, the quality of law practiced in this state has been excellent.

It has, however, been asserted that the present bar examination program does not permit a bar association representative of the state's population. Of the 17 blacks who took the July, 1976, bar examination, only two passed. Other minorities may have a relatively low pass rate. Certain client constituencies therefore may be less effectively represented than they would have been had those candidates been admitted to the bar. The California and Oregon Bar Associations have taken steps to increase minority representation within those bar associations. Several steps have been proposed for Washington, including a reduction in the overall passing grade for the bar examination and permitting an examinee to retake only those areas of the bar examination which he or she did not successfully complete at the first sitting. It is suggested that the substance of the exam be changed, stressing such subjects as welfare and consumer law, civil rights law and other

Philip H. Brandt, Lynden

C. James Judson, Seattle

Kenneth B. Rice, Everett

Robert H. Whaley Spokane

The authors are members of a Young Lawyers Section committee who have been studying professional admissions procedures, including alternatives to reliance upon a bar exam.

areas of law which would be more likely of concern to one practicing in certain communities in the state. It is also proposed that the committee monitoring and grading the bar exam have increased minority representation.

In addition, it has been questioned whether the bar examination measures in a consistent fashion the criterion which we have already identified as being most critical to the professional duties of the bar: maintaining competency of those admitted to practice. In many respects, it is argued, the bar examination tests primarily the examinee's facility with words and expression rather than his substantive knowledge of the law. The skills of rapid organization and problem solving, while important, may not be as important to the practicing lawyer as an understanding of broad subject areas of the law which can in real life be approached with somewhat more deliberation than is possible on an exam. Further, the bar exam does not measure the applicant's knowledge of basic, nuts and bolts practice.

THE WISCONSIN SYSTEM

The Wisconsin Supreme Court Rules permit a person 21 years of age or over who is a graduate of an approved Wisconsin law school to be admitted by motion. Successful completion of a bar examination is not required. The applicant is required to complete at least 60 law school semester hours of accredited study in certain areas of the law including no less than 30 semester hours in constitutional law, contracts, criminal law and procedure, evidence, jurisdiction of courts, ethics, pleading and practice, real property torts, wills and estates.

Individuals who have not attended a Wisconsin law school are admitted upon successful completion of Wisconsin's bar examination.

How does the Wisconsin admission system meet the prime criterion described above — guaranteeing competency? The answer must depend primarily on the quality of education in Wisconsin law schools. The following statistics are derived from the July, 1975, Washington State Bar Examination. Three out of the four (not a statistically reliable sample) University of Wisconsin graduates who took the Washington State Bar Examination for the first time passed. The University of Washington pased 105 out of 123

first timers, an 85% pass rate. The University of Puget Sound passed 61 out of 86, for a 71% pass rate. Gonzaga University passed 100 out of 163 first timers, for a 61% pass rate. Whether the bar examination itself tests competency accurately is open to question; nevertheless the statistics quoted above suggest that competency is not necessarily assured by graduation from an in-state law school.

The Wisconsin system does have its advantages, including efficiency and cost effectiveness of administration, predictability to the point of certainty for Wisconsin law students, and ensuring of a representative bar membership to the extent that Wisconsin law schools graduate students who are representative of the Wisconsin population at large.

APPRENTICESHIP OR WORK EXPERIENCE

We will describe in this section systems of apprenticeship which have been adopted by the Law Society of British Columbia, the Vermont Supreme Court and the Washington State Board of Accountancy, respectively.

British Columbia has different rules depending on whether the applicant has graduated from a Canadian law school, from a law school elsewhere in the British Commonwealth or United States, or has otherwise completed a legal education. We describe only the admission procedure followed by an applicant who has graduated from a Canadian law school.

Applicants must "Article" for a period of 12 months before being eligible for admission to the Law Society. The applicant is hired by a "Principal", who is a member of the Law Society with at least four years of experience in the practice of law. The applicant and his Principal enter into a contract, called the Articles, providing for certain duties on the part of the applicant and certain educational and orientation duties on the part of the Principal. The applicant is obligated to find an Articling position and the Law Society does not undertake to secure positions for all applicants. The applicant is admitted to a very limited form of practice during his Articling period.

During the 12-month Articling period, the applicant attends a tutorial program generally consisting of 2-hour tutorials held twice a week for 8 months. There are two sets of sessional examinations after completion of the fall and spring terms and the applicant is required to pass at least 6 of the 8 examinations with a minimum 55% average. The subject areas covered by the tutorials and the examination are professional responsibility, commercial law, real estate, company law, civil procedure, criminal procedure, domestic relations and the law of executors and trustees. Those applicants who are outside the main metropolitan areas receive no tutorial lectures but must work on their own using written tutorial materials. Each Articled student may take the tutorial examinations only twice, and if the second attempt is unsuccessful, he or she is refused admission to the Law Society.

The Province of Manitoba uses a different system whereby one day each week is set aside for the tutorial program and applicants do not work in their offices on that day.

Depending on the nature of the tutorial lectures and the responsibilities of the Principal for training the applicant, the Articling system could be aimed primarily at practical training rather than law school-type theoretical law.

The Washington State Board of Accountancy requires both passage of an exam and completion of a minimum period of work experience as prerequisites for certification. For most applicants, this means one or two years of employment in a CPA firm as an apprentice-professional, and for accounting graduates who cannot find jobs, it means alternative employment in other areas. The exams cover several subjects, and a student can fail one or more of the substantive areas and retake only those, gaining credit towards the requirements for certification for those areas which he or she has passed.

Vermont requires a law school graduate to successfully complete the bar exam and also to serve as an apprentice-clerk with a practicing attorney for a period of six months. Clerkship positions are sometimes difficult to obtain and compensation may be relatively low.

The effectiveness of these programs in terms of ensuring competency is determined by the method of administering the screening system. Approximately 300 applicants are presently enrolled in the British Columbia Articling program. The failure rate in the tutorial examinations is "very low" and may either be a reflection on the high caliber of the applicants or may indicate a need for a more demanding program.

The prospect of structuring a screening process that requires practical experience and an examination testing the mastery of practical aspects of client representation is intriguing. If competency is the ability to deal effectively with client-oriented legal problems, then competency may be greatly enhanced by a well-directed apprenticeship and tutorial program. On the other hand, such a program would be expensive to operate and, given the large number of examinees in recent bar examinations, cumbersome. Over 700 applicants took the July, 1976 bar examination and the numbers of applicants show no sign of decreasing. In addition, in an apprenticeship program, new law school graduates would be denied the option of immediately opening up their own offices.

EDUCATIONAL PROGRAMS

New Jersey has adopted a program which requires successful bar examinees to take a Skills

Training Course prior to admission to full membership in the bar association. The Skills Training Course is designed to acquaint practitioners newly admitted or about to be admitted to the New Jersey Bar with locally used techniques and procedures for handling those problems commonly experienced in early practice. In addition, newly admitted practitioners must demonstrate an acquaintance with those local methods and procedures through an examination program. The program involves both lectures (which are optional) and completion of certain practice exercises in the substantive areas covered by the Skills Training Program. Areas include ethics; civil trial preparation; real property; will drafting; probate practice and estate administration; organization and sale of small business; criminal trial preparation; and family law.

If a practice exercise is not successfully completed, the applicant is notified and provided with a makeup exercise accompanied by suitable instructions.

The University of Wisconsin Law School offers a General Practice Course to its students, who learn practice-oriented skills by doing lawyer work first hand. Students do exercises involving the kind of work lawyers are likely to handle in their first few years of general practice. They learn a lawyer's skills: interviewing, negotiating, drafting, examining witnesses and the like. They are made aware of the human side of practice: attorney-client relationships, nonlegal counseling, cooperation with other client advisers. Ethics are emphasized. Mechanisms for providing legal services are studied: use of library facilities, how to keep clients informed, personal work habits and so on.

The Supreme Court of Indiana has adopted its Rule 13 with the intended purpose "to improve the standards for admission to the bar and improve the effectiveness of legal counsel in Indiana." The committee which recommended the rule found, after reviewing the results of many bar examination papers, that the examinees who failed certain questions had frequently not taken courses in those subject areas. Further, even if a course had been taken in the area, the substance of the course frequently bore little relationship to its title and did not provide adequate foundation for a bar examination.

In response to this concern, Rule 13 requires that all those individuals seeking admission to practice in Indiana have educational experience in certain specified subject-matter areas. The Rule does not require specific courses but only requires that applicants have a certain number of semester credit hours in broadly described subject-matter areas during law school.

A basic skills course could be crafted to stress the areas of legal practice deemed critical by the bar association. Combined with an interim or limited license to practice between the time of successful completion of the bar examination and completion of the skills training course, the program could be a substantial factor in ensuring a minimum level of competency among newly admitted lawyers. The course would involve substantial administrative costs, both in terms of dollars and commitment of professional time. Superimposed over a bar examination program, the requirement of successful completion of a skills examination would increase rather than decrease the noncompletion rate among applicants for admission to the bar. Because the skills lectures would not be available to new lawyers in all parts of the state, some applicants would be subject to a disability in the examination portion of the program. Depending upon the content and administration of the program, minorities who have legitimate concerns about the bar examination program could simply find their concerns multiplied and applicable to the basic skills course. If the program results in significant delay in admission to practice for most applicants, individual economic hardships may be the result.

CONCLUSION.

It is important to restate that this article is not intended to argue for or against any particular revision of the present procedure whereby applicants are selectively admitted to practice law in this state. The purpose of this article is to present alternative admissions systems in order to inform and solicit comment by members of the bar. If you have thoughts regarding the present system for admission to the bar or relating to alternative methods for admission, whether discussed here or not, we invite you to contact us and present your views before we complete the committee's report to be projected to the Board of Governors next month. □

WASHINGTON LAWYERS SERVICE ACTIVATED

By **JAY V. WHITE**

TUMWATER, January 21-22 — The Board of Governors has approved steps to authorize the immediate activation of the Washington Lawyers Service, thereby taking off the drawing board and bringing into reality the bar's plan for group and prepaid legal services.

The Board's meeting held in this town that made Olympia famous, was marked by a joint session with members of the Supreme Court, and a review of proposed legislation of interest to the bar which likely will be considered and acted upon by the present legislature.

Upon the unanimous vote of the Board, Edward J. Novack of Everett was named President of the bar association for 1977-78. *See Box,* p. 17. Board member Edmund B. Raftis announced his resignation, effective March 1. The Board appointed Paul R. Cressman of Seattle to serve the remainder of Raftis' term which expires in 1978. *See Box,* p. 18.

At noon Friday, the Board attended a joint luncheon meeting of the Thurston County and Governmental Lawyers bar associations. President Richard H. Riddell addressed the group, presenting a summary of matters recently considered by the Board.

All members were present for this January session, including Kenneth B. Rice, as ex officio member, representing the Young Lawyers Section and substituting for Robert W. Burns.

Edward Novack To Be Bar President 1977-78

Edward J. Novack of the Everett firm of Williams, Novack & Hansen, P.S.. was named President of the bar association for 1977-78 by the unaminous Board of Governors at its Tumwater meeting. Novack is a graduate of the University of Washington law school admitted to the bar in 1953. He served as a member of the Board of Governors, 1971-1974. He will assume the bar presidency at the close of the Annual Meeting this September in Vancouver, B.C.

Raftis resigns Board of Governors; Paul R. Cressman Appointed Until 1978

Edmund B. Raftis of Seattle, Governor at Large for King County, has resigned from the Board of Governors, effective March 1. Raftis is leaving the state to accept the position of Assistant General Attorney for AT&T Long Lines, Bedminster, New Jersey, where he will be in charge of domestic telecommunication matters before the FCC. The Board has appointed Paul R. Cressman of Seattle to serve the remainder of Raftis' term which expires at the close of the Annual Meeting in 1978.

Edmund B. Raftis

Paul R. Cressman

Raftis, a graduate of the Georgetown Law Center, Washington, D.C., was admitted to the bar in 1963 and was associated with what is now the Seattle firm of Bogle and Gates until 1967 when he assumed his present position as General Attorney for Pacific Northwest Bell for Washington and Idaho. A native of northeastern Washington, Raftis has long been active in bar activities. He is a member of the Judicial Council, and served as editor of the *Bar News* during the rather turbulent period, 1969-72. He was elected to the Board in 1975.

Cressman, of the firm of Short, Cressman & Cable, is a graduate of the University of Washington law school admitted to the bar in 1949. He served as a member of the Board of Trustees of the Seattle-King County Bar Association, 1968-70, and has been active in both Washington State and American Bar Association activities.

President's Report

President Riddell reported on favorable response from members of the state Congressional delegation regarding the Board's recent letter urging immediate filling of the vacancy on the federal bench occasioned by the death of Judge William Goodwin, and the creation of new federal judgeships for Washington. See The Board's Work, *Bar News,* January, 1977, p. 26.

Regarding the state judiciary, President Riddell cited the remarkable prediction offered by Court Administrator Phillip B. Winberry in his annual report to the legislature: given the projected volume of litigation in this state, *by 1989,* more than double the present number of Superior Court Judges will be needed to handle the caseload — 209 judges, as compared to the present 101. The Board unanimously authorized the President to appoint a committee to study alternative means of dispute resolution in an effort to reduce the number of trials which otherwise will occur.

Washington Lawyers Service

Claude M. Pearson, chairman of the Group and Prepaid Legal Services Committee, reported that a labor union with members living in Clarkston, Washington, and Lewiston, Idaho, wants to offer group prepaid legal services through the Washington Lawyers Service (WLS) beginning February 1, or March 1 at the latest.

Following Pearson's report, the Board authorized President Riddell to make the necessary appointments to activate the Washington Lawyers Service by expansion of the present six-member lawyer board to the planned full board of thirteen, including a lay president and six lay members, consisting of both union and non-union representatives. The Board authorized appointment of two lawyer members to replace two of the lawyer-members serving on the initial board which otherwise will continue to serve as presently constituted. Names of final appointees are not known at this writing.

In other action, the Board approved identical joint-resolutions with the Idaho and Oregon bar associations to facilitate reciprocity between

Washington lawyers serving as WLS panel members and their counterparts in those states. This will permit WLS to offer legal services to groups with members living in both Washington and either Oregon or Idaho.

Meeting With Supreme Court

Six members of the Supreme Court, (Chief Justice Wright and Justices Hamilton, Stafford, Brachtenbach, Horowitz and Hicks), together with John J. Champagne, clerk of the court, and Court Administrator Phillip B. Winberry, met with the Board in a joint session late Friday afternoon.

Matters discussed included a report on professional liability insurance by Board Member Robert R. Redman similar to Redman's report to the bar last month (*Bar News,* January, 1977, pp. 21-24); administrative problems presented by the new appellate rules; proposed changes to APR 7B, relating to indigent representation; and proposed revisions to the Code of Professional Responsibility.

Chief Justice Wright presented a review of the Court's budget request to the legislature, emphasizing that the Court has made every effort to present a minimum budget. He emphasized the need for funds to pay counsel appointed to represent indigents on appeal, pointing out that the present contract with the Seattle/King County Public Defender's office providing for that office's representation of 60 percent of King County's indigent criminal appeals establishes the "low budget" figure of $1,038 per appeal, yet the Court has only had funds available to compensate appointed counsel at a rate averaging $450 per appeal.

Legislative Proposals

William L. Stephens, legislative representative for the Legislative Committee, presented the Board a detailed summary of a wide variety of pending legislative proposals. In formal action, the Board decided that the bar association will (1) *support* the request for additional Superior Court Judges; additional Court of Appeals Judges; funding requested by the Supreme Court for payment of counsel for indigent criminal appellants; and the salary recommendations of the Salary Commission relating to judicial compensation; (2) *support* House Bill 180 strengthening the use of the "long arm" statute in dissolution cases; and (3) *oppose* Senate Bill 2025 which amends the Public Disclosure Law to make available to public inspection the identity of those arrested or charged with certain specific offenses.

In related action, Paul R. Cressman and James A. Oliver, both of Seattle, presented the Medical Malpractice Task Force report to the Board, and discussed generally the legislative proposals of the Washington State Medical Association. The Board decided that the bar association will: (1) *support* the medical association's proposed legislation relating to a self-insurance program; (2) *oppose* proposals providing for mandatory binding arbitration; the voiding of any legal effect of oral agreements as to medical results or cure (statute of frauds requirement); and the requirement of a 90-day notice of intent to file malpractice suit; (3) *refer* to the Legislative Committee the medical association's proposal providing for a "malicious prosecution" counterclaim by de-

fendant in a medical malpractice lawsuit; and (4) *take no position* on a proposal to add a lay member to the Washington State Medical Disciplinary Board.

Harold C. Fosso of Seattle met with the Board to discuss possible legislation relating to joint tort-feasor's contributions, including separate proposals by Board Member Willard Walker; the Judicial Council; and Dennis G. Opacki of Seattle. Also considered was a report by the Committee on Court Rules and Procedures. Thereafter, the Board voted to go "on record" in favor of contributions, apportionment and permissive joinder of defendants by defendants so long as the plaintiff's recovery is not diminished. It was agreed that appropriate legislation should be drafted and submitted to the legislature.

Advertising and Specialization

Debate was sparked among members of the Board over proposed amendments to the Code of Professional Responsibility, including authorization of a legal directory published or approved by the bar association which would contain limited information about members of the bar and be made available to the public. A similar division in the Board occurred during discussion of a Board of Specialization plan for self-designation of specialties by attorneys. In both instances, the "debate" was short-lived and centered upon the question of whether action should be delayed pending decision by the United States Supreme Court in *Bates and O'Steen v. State Bar of Arizona,* No. 76-316, involving a challenge to a bar association's authority to bar lawyer advertising.

It was moved by Board Member Charles Olson, seconded by Board Member Michael Hemovich, that the proposed CPR revisions be tabled pending the *Bates and O'Steen* decision. This motion was defeated, 6-4, with Board Members Walker and Redman joining Olson and Hemovich in the minority. Thereafter, the Board agreed to forward the proposals to the Supreme Court with the advice that the Court may desire to defer action pending the *Bates and O'Steen* opinion.

On the issue of specialization, Hemovich, seconded by Walker, moved to defer any discussion of specialization until after the *Bates and O'Steen* opinion. Walker noted that he is in favor of specialization, but that he is opposed to the self-designation proposal which, he argued, amounts to advertising to which he also is opposed in "any way, shape or form". Board Members Bradley T. Jones and Edmund B. Raftis argued that it was not necessary to await the *Bates and O'Steen* opinion because it probably would not reach specific self-designation proposals. Board Member Betty Fletcher, seconded by Raftis, offered a substitute motion to table the matter of specialization until the February meeting of the Board. The substitute motion was defeated 4-5, with Fletcher, Raftis, Hoff and Jones in favor, and Hemovich, Walker, Olson, Peterson and Redman opposed. Subsequently, the vote was called on Hemovich's motion to table the matter pending the *Bates and O'Steen* opinion. The motion passed, 5-4.

Rule 7B: Indigent Representation

James Donohue and James Henry Plasman, VISTA lawyers who are working for the Puget Sound Legal Assistance Foundation and who have applied for admission to practice under APR

7B, met with the Board to discuss amendments to that rule proposed by Board Member Walker. The thrust of the proposed amendments is to limit the period of time in which an out-of-state lawyer may represent indigents under Rule 7B without taking the bar examination by requiring him to take the first bar examination given more than 90 days after his admission under the rule. The Board agreed to drop proposed language which would have required the presence of supervising attorneys in all proceedings handled by a 7B attorney and which would have permitted only attorneys serving "without compensation" to practice under the rule. With these changes, on Walker's motion, the Board unanimously forwarded the proposal to the Supreme Court. The Board also voted to leave intact the present prohibition against listing the names of 7B attorneys on the letterhead of a lawyer or law firm.

Miscellaneous Topics

In other actions, the Board:

- Appointed members of the Board of Bar Examiners, providing for compensation in the amount of $4,000 for each examiner participating in the July exam, and $2,000 each for those involved with the February exam;
- Voted to support the Seattle-King County Bar Association's request for additional Superior Court Judges for King County to alleviate trial congestion, and to support similar efforts all over the state;
- Endorsed federal executive, legislative and judicial salary increases;
- Voted to continue present policy precluding release of the bar association's membership list, but agreed that every effort should be made to promote seminars of all organizations approved by the Board of Continuing Education;
- Approved the recommendation of the Client's Security Fund Committee that the sum of $775 be paid a former client of a deceased attorney, William Lockett;
- Voted that the sum of $10,500 previously received as a dividend in connection with the bar's personal insurance program be delivered to the Insurance Trust Fund for appropriate use. □

Comments Requested On Proposed Audit Rule

The Washington State Supreme Court would like to receive comments from State Bar members concerning DRA 13, the proposed new rule on the audit of lawyers' books and records.

All comments should be mailed directly to John J. Champagne, Clerk, The Supreme Court, State of Washington, Olympia 98504. Comments must be received by the Clerk no later than April 1, 1977.

The text of the proposed rule is printed in full below.

13. AUDITS

RULE 13.1

AUDIT AND INVESTIGATION OF BOOKS AND RECORDS

The Board and its Chairman shall have the following authority to examine, investigate and audit the books and records of any attorney for the purpose of ascertaining and reporting whether (CPR) DR 9-102 has been or is being compiled with by such attorney:

(a) The Board may from time to time authorize examinations of the books and records of any attorneys or firms of attorneys, selected at random. Such examinations shall extend only to the books and records of such attorneys or firms of attorneys.

(b) The Chairman of the Board may, upon information that a particular attorney or firm of attorneys may not be in compliance with (CPR) DR 9-102, authorize an examination limited to the scope set forth in section (a).

(c) Upon the examination set forth in section (a) or (b), if the Chairman of the Board shall determine that further examination is warranted, the Chairman may then order an appropriate audit of the attorney's or the firm's books and records, including verification of the information therein from available sources.

RULE 13.2

COOPERATION OF ATTORNEY

It shall be the duty and obligation of any attorney or firm who is subject to examination, investigation and audit under Rule 13.1 to cooperate with the person conducting the examination, investigation or audit subject only to the proper exercise of any privilege against self-incrimination where applicable, by:

(a) producing to such person forthwith all evidence, books, records and papers as such person shall request for the purpose of his or her examination, investigation or audit;

(b) furnishing forthwith such explanations as the person may require for the purpose of his or her examination, investigation or audit;

(c) producing, in those cases where the examination, investigation or audit is being conducted pursuant to Rule 13.1(c), to such person forthwith written authorization, directed to any bank or depository, for the person to examine, investigate or audit trust and general accounts, safe deposit boxes and other forms of maintaining trust property by the attorney in such bank or depository.

RULE 13.3

DECLARATION OR QUESTIONNAIRE

The Association shall cause to be directed annually to each attorney a written declaration or questionnaire designed to determine whether such attorney is complying with (CPR) DR 9-102. Such declaration or questionnaire shall be completed, executed and delivered by such attorney to the Association on or before the date of delivery specified in such declaration or questionnaire.

RULE 13.4

DISCLOSURE

The examination and the Audit Report shall be open to the Disciplinary Board, the attorney examined, investigated or audited, and to the Board of Governors upon its request, unless a disciplinary proceeding is commenced in which event the disclosure provision of Rule 11.7 shall apply.

RULE 13.5

REGULATIONS

The Board may adopt regulations pertinent to the powers set forth in this rule subject to the approval of the Board of Governors and the Supreme Court.

EAST KING REPORT

By **BARRY J. HASSON**

At the last monthly general meeting for 1976, on December 20th, the East King County Bar Association elected three trustees and a new Vice President. The new trustees are **Richard Mah, Jr.** and **Carl Scott** (''Call me Scott'') **East. Barry J. Hasson** was re-elected. The new Vice President is **Ralph Thomas.**

At the crack of dawn on January 4, 1977, the new Vice President and all the trustees, including **Ray M. Dunlap** and **Douglas L. Cowan, Jr.**, our new President **Charles Diesen,** our outgoing President **J. Hartley Newsum** and the perennial Secretary-Treasurer Judge **Anthony P. Wartnik,** met. A lot of business was accomplished; however, a motion to change the trustees' meetings to a luncheon or dinner meeting was tabled.

Jerome D. Carpenter has become an associate of the Inslee, Best, Chapin and Doezie firm. That same firm was able to ignore inflation and hire a sail boat for their office Christmas party.

One of our Eastsiders, ''Walking'' **Will Knedlik,** now is practicing law, we are led to believe, in our State legislature. **Terry P. Abeyta** has joined the firm of Powell, Livengood, Silvernale, Carter and Tjossem in Kirkland.

Walt Krueger has moved his office — all the way down the hall from his previous office space.

As the new writer of this column, I would like all information regarding new members of the Eastside King County legal community and interesting tidbits brought to my attention.

KITSAP REPORT

By **J. MICHAEL KOCH**

You have a new reporter for the Kitsap County Bar who has been requested to publish news of the entire County Bar Association.

Some new faces on the Kitsap legal scene: **John F. Mitchell,** a Dec. '75 graduate of UPS, is associated with **William R. Garland.** Associated with Maddock & Bell is **Jack W. Hanemann,** also a '75 UPS graduate. **Russ Hartman** (U. of Oreg. '76) has associated with Bishop, Cunningham & Costello. Two new associates with Walgren, Sexton & McCluskey are **Christopher A. Washington** (U. of Wisconsin '76) and **Andrew W. Olsen** (Georgetown '75). With the firm of Shiers, Kruse, Wallace & Kamps are associates **Steven R. Buzzard** (UPS '75), **Gary T. Chrey** (American U. '75) and **Robert P. Love** (U. of Ida. '75).

Public Defender **James Munro** has retired effective January 14; **William M. Crawford,** a '72 graduate of UW, is Acting Public Defender.

Stephanie Farwell (UPS '75) has joined Kitsap Legal Services in Bremerton. Joining the Kitsap County Prosecutor's Office recently were **Kenneth R. Parker** (Temple U. '76) and **Paul S. Majkut** (UW '75).

A partnership with offices at 1206 Sheridan Road, Bremerton, was commenced last November by **John Jackson** and **Bill Lawrie.**

Jack Cyr wants to know if anyone is interested in investing in Christmas trees in Mason County. Please contact him. (No written prospectus will be issued.)

The Bremerton firm of Sanchez, Martin & Armstrong have announced that **Larry Paulson** has now been made a partner in that firm. In Poulsbo, **Robert Krucker** has been made a partner in the offices of **Conrad Green** and **Jay Roof.** The new firm is Green, Roof & Krucker.

One of the young aspiring members of the Bar, **Michael McCanta** (Gon. '74) has set up a branch office in Belfair while maintaining his other office in Bremerton. **Jerry Dolan** (Gon. '75) has set up a sole practice in Manchester. The question asked Jerry by fellow members of the Bar is, ''Is Manchester big enough to support a law practice?''

Ron Pinckney, a '74 graduate of Willamette, was made partner in the firm of Walgren, Sexton & McCluskey recently. That firm is anticipating their spacious new quarters being constructed to overlook the Washington Narrows. Query: Can any other city in the state boast an Assistant City Attorney driving a Rolls Royce? **Gary Sexton** is driving about in a '74 Rolls, *without* license plates!

Tom O'Hare and **"Mac" Redman** are doing double duty while their partner, **Rick Smith,** acts as one of a vanishing breed of practicing lawyers in the legislature. Rick is one of only five lawyers in the House — four active and one who is retired.

Sherrard & McGonagle report that **Roger Sherrard** is now a partner in their firm. That firm, incidentally, was recently successful in securing an $81,000 verdict against two racing Snohomish County deputy sheriffs who ran into their plaintiff, who was backing out onto the highway at 1:30 A.M., with no lights. The jury found 1% negligence on the part of the plaintiff!

A former Assistant Attorney General of Seattle, **Gerald Casey** is now a partner with **Dudley Perrine** and **John Davis.** The firm's new name is Perrine, Casey & Davis.

Frank Shiers publicly denies that he is responsible for putting the bumper sticker on the back of his 1960 VW bug: "Whiplash Lawyer." He has not caused its removal however.

PIERCE REPORT

By **MICHAEL J. TURNER**

Wintertime athletics occupies a large portion of this month's report. For the first time in his long and industrious career, **Marshall Adams** has not been invited to the California Angels Spring Training Camp. Rumor has it that the free agent draft caused his demise. Marsh is hopeful of picking up with the Mariners as a free agent. **Phil Tracy** advises your reporter that he has successfully completed another hunting season and that the only "big game" he saw was at a card table and that was for the "birds."

Monte Hester has announced that he has been appointed social chairman of the "Noon Time Players," which is a takeoff of the New Paris Follies. The group consists of **Robby Baker, Dick Benedetti, Keith Black, Ron Coleman, Greg Curwen, Pat Duffy, Tom Larkin, John Ladenburg, Terry Lumsden, John McCarthy, Gary Rentel, Mike Turner,** and **Stan Wagner.** At various times this group can be seen running topless on the basketball court.

Prosecutor **Don Herron** and **Keith McGoffin** claim to be the Pierce County Champions for "Senior Mens' Masters and 45 and Older" doubles champions for their prowess on the tennis courts. Bankruptcy Judge **Bob Skidmore** and **Jack Tanner** have challenged them, but the former have maintained a Muhammed Ali outlook and have retired.

The Hero of the Month Department this month is split between **Bill Boyle** and **Jim Mason.** Bill receives his honors for his outstanding new permanent, and Jim for participating in his 58th lawsuit between the same two parties.

Larry Ross and **Dave Schweinler** almost had a catastrophe just before Christmas. A fire broke out in the office next door to theirs, but they suffered

only minor smoke and water damage. Dave reported that the worst damage was caused by the swelling of the kennel rations, which he uses to feed his "dog cases." Larry was heard to complain because none of his files were destroyed.

SEATTLE-KING REPORT

by **JOHN SOLTYS**

Henry W. Grenley announces he is entering into a partnership with **Charles N. Mullavey** under the name of Mullavey & Grenley at 2405 N.W. Market Street, Seattle, awaiting the completion of new offices at 17th and NW 56th.

Paul L. Raymond, formerly of the Detroit Federal Defender Program, has opened an office for the general practice of law at 414 Smith Tower, Seattle, Washington, 98104, 622-7802. **Dan Wershow** is of counsel.

Ausum, Bassett & Gemson announce the relocation of their offices to 602 The Bank of California Center, Seattle, Washington, 98164, 623-7901, and that **Frank R. Morrison, Jr.** has become a partner in the firm and **Carol J. Teather** and **Alan J. Peizer** have become associates of the firm.

Walthew, Warner, Keefe, Arron, Costello & Thompson announce the association of **Andrew C. Heinegg** with their law firm at The Walthew Building, 123 Third Avenue South, Seattle, Washington, 98104, 623-5311.

Patricia Kaiser has become an associate with the firm of **Neubauer, Gayton & Prince, P.S.** located on the Second Floor of the Hoge Building, Seattle, Washington, 98104, 622-7050.

SNOHOMISH REPORT

By **GERALD L. KNIGHT**

I am pleased to announce that the new officers of our association are:

Stuart C. French - President
Donald J. Lyderson - Vice President
Faye Collier Kennedy - Secretary
Curtis P. Thomson - Treasurer

Our outgoing president is **Herman Michelson,** and we all wish to thank Herman for a job well done.

Since there have been some recent amendments to our local Court Rules which have not as yet been published but become effective February 1, 1977, I believe it apropos to put in this column said changes for the information of out-of-county practitioners as well as in-county practitioners. The principal amendments are as follows:

1. Any motion that will require more than ten minutes per side must be brought to the attention of the Court administrator not less than 48 hours before the matter is to be heard. Furthermore, confirmation that such matter is to be heard must be given to the Court administrator no less than 24 hours prior to the time of the scheduled hearing. Failure of any party to comply, will result in the matter being stricken and/or terms. Additionally, any motion that is anticipated will take longer than one hour shall be set or placed on the Trial Calendar.

2. In setting cases for trial, the attorney noting the case for trial setting, shall certify that all issues of fact have been joined by service and necessary pleadings.

3. An additional amendment which will greatly expedite matters deals with step-parent adoptions. In the past, it has taken anywhere from four to six months to get the next friend report for step-parent adoptions. This time delay should be greatly reduced by the new amendment which in essence has the attorney representing the adopting party supply all the information for the next friend in a form which is available at the courthouse, then the adopting parent simply has a brief interview with the next friend.

I believe these new amendments to be quite helpful and wish to thank **Judge Britt,** who is currently the presiding judge, as well as the other judges in enacting these amendments.

Stuart, now that you have taken over the task as president, I am sure you are lining up appointments and I wholeheartedly recommend **Jim Twisselman** to be in charge of the *Bar News* Committee. After all, I've gotten all my information in the past from him.

At our last bar meeting, **Herman Michelson,** due to the tremendous influx of new attorneys in the county, suggested that

every attorney present stand up and identify themselves. Since your scribe opened up a practice in Snohomish County approximately five years ago, there has been an increase of over 100% in new attorneys. There were a little under one hundred attorneys then, and now we have over 200 practicing attorneys in Snohomish County.

Also, at our last bar meeting, **Doug Lindsay** from Snohomish County Juvenile Court and **Kay Trumbull** from the prosecutor's office, who has for the last year been "exiled" to the Juvenile Court, gave a very informative speech concerning the Juvenile Court. Due to their vast knowledge and pearls of wisdom that the speakers imparted to the audience, don't you think this should count for at least 3 hours credit towards compulsory continuing legal education, **Ed Novack?** (Ed has the honor (?) of serving on the commission that will oversee the compulsory legal education program.)

Tom Bigsby and **Frank Willson** have opened a new practice in the Cascade Savings and Loan Association building in Everett.

Ken Green has associated with **Mike Carlson.**

John Shields and **Mike Clarke** have taken over **Sam Hale's** practice and same is retiring to enjoy the finer aspects of life. I always knew that Sam was quite smart.

SOUTH KING REPORT

By **JAMES L. VARNELL**

January Meeting and Coming Attractions. **David W. Boerner,** Chief Criminal Deputy of the King County Prosecuting Attorney's office spoke to the January meeting of the South King County Bar Association on the subject of presumptive, a/k/a mandatory, sentencing. This correspondent thought that Boerner's presentation was persuasive, although **Jack Hawkins, Bob Stead, Jim Lawrie,** and **Tom McElmeel** might not agree with that assessment. President **Pete Curran** and program solicitor **Woody Leverette** have announced that for the March meeting **Steven Johnson** has organized a presentation on law office management. In April Supreme Court Justice **James M. Dolliver** will address the association.

Annual Awards of Merit. The following awards, presentations, and commendations were made at the well-attended Christmas party, which saw the first appearance by **Ken Ingalls** since his term as association president expired some two years ago.

Bob Kuvara received the Truman Capote - Rex Reed Award for literary criticism of a regularly appearing monthly "news" article of general interest; **Pete Curran** was presented with one bottle of Sominex for "Most Bar Meetings Having Slept Through"; in the tonsorial division **Kameron C. Cayce** was recognized for the hair style most closely resembling Conway Twitty (as determined by **Thomas N. Bucknell**), and **Bill Donais** was presented with a plaque engraved with the words: "See, I knew flattops were out!"

The James W. Mifflin award for best presentation at a settlement conference went to **Jack Soltys;** the Don Rickles Mr. Nice Guy award was made to **Robert G. Wallace.** (Wallace was also presented with a UCC Form 1 for his work in the field of commercial transactions, as determined by Professor Richard Cosway.) The Albert Gore Award for second best attorney originally from the state of Tennessee now practicing in King County was made to **James F. Sanders.**

New Association. **Hamilton Underwood** and **Joseph J. McGoran** have announced the formation of a new partnership with their offices in Federal Way. McGoran is a 1974 graduate of Gonzaga University Law School and was with the Washington Attorney General, Department of Ecology, for two years.

CLE: Trial and Appellate Practice. Recently admitted attorneys with relatively little experience in the courtroom (whether trial or appellate) may wish to review *U.S. v. Marshall,* 488 F.2d 1169 (9th Cir. 1973). Additionally, *Marshall* is must reading for anyone who does not understand the "almost impenetrable jargon" of the D.E.A. agents, or for any attorney who may have had an "unfortunate contretemps" with a court reporter over preparation of the transcript.

Honorable Mention. Special

mention should go to the following readers of the *Bar News* for complimentary remarks directed to the writer of a regularly appearing monthly article: **Larry Leonardson, J. Michael Koch, Bill Levinson,** and **David M. (Mac) Shelton.**

SPOKANE REPORT
By **GREGORY J. TRIPP**

With the many people passing the Bar recently there have been a great many new lawyers beginning practice in Spokane and joining firms here. **Duane Schofield, Matt Sanger** and **Martin Salina** have joined the firm of Delay, Curran & Boling.

A 1975 Lewis & Clark Law School graduate joined **Ed Dawson.** The new lawyer's name is **Joseph Bennett.**

The firm of Dellwo, Rudolf & Schroeder, P.S. announced that **Terry Grant,** the son of a former partner, and now Superior Court Judge, **William J. Grant,** joined that firm on November 1, 1976.

Underwood, Campbell, Zellmer & Brock became Underwood, Campbell, Brock & Cerruti when **Willard Zellmer** joined the Lincoln County Superior Court.

Michael J. McMahon, a graduate of Gonzaga University has joined the firm of Randall & Danskin.

The Spokane County Superior Court has been appointing Pro Tem Judges upon agreement of the parties from the membership of the Spokane County Bar Association to hear and decide matters of short duration. It appears this has been a most helpful way to alleviate the backlog on an otherwise fairly efficient trial docket.

The County Bar Association had its Christmas Party on December 17, 1976. All members whose dues were current were invited. There were no fist fights or arrests.

THURSTON-MASON REPORT
By **FRED D. GENTRY**

First we had **Bill Britton's** father, **Lester G. Britton,** seventy-six years of age, join our Bar by taking the Bar Exam last December. Now we have **Ed Holm's** father-in-law, **John Buckwalter,** age fifty-nine, and a June graduate of the University of Puget Sound Law School, join us. John is embarking on a second career after working for Hughes Aircraft Company for many years. He has joined **Barney McClanahan's** staff in the Mason County Prosecutor's Office.

Bob Quillian, a University of Virginia graduate, has joined the ever-growing firm of **Mooney, Cullen & Holm.** What started as a two man firm three or four years ago has now grown to eight members, according to the letterhead on the latest letter this

writer has received from their office.

Bar dues were raised from Ten Dollars to Fifteen Dollars at the last meeting of the Thurston-Mason Bar Association. It was noted that the cost of flowers for sick members and especially drinks for visiting members of the Bar and judiciary had gone up significantly since the last increase.

YAKIMA REPORT

By **GARY M. McGLOTHLEN**

The Yakima County Bar Association's Annual Christmas Party, chairmaned by **Dennis Fluegge** was as usual a smashing success. The traditional skit after the prime rib and wine dinner allowed the Thespian image in the lawyer participants to come out in the forefront. It was a memorable evening, night and following morning.

Richard Dameyer of Seattle, is rumored to be moving his law practice to Yakima. Richard is the owner of the Roza, Senator and Savoy Hotels in Yakima.

Chuck Amstutz of Wapato, recently seen operating his dirt bike motorcycle on the public highways in Wapato (he is their City Attorney) stated he was just trying to save on gas so he could pay the hospital bills incurred when his daughter was born November 12, 1976. This makes three daughters for Chuck and we understand he is trying for an all girl hockey team.

New faces abound at the local bar, and after the showing of professionalism at the Christmas Party, they may even stay here. **Denny Colvin** out of Willamette School of Law is with the Halverson firm. **Fred Kull** from Gonzaga is with **Bill Aiken** in Sunnyside, while **Alfred Falk** is holding up with **Smith** and **Scott** in the old homestead. **Michael Lynch,** Willamette is with **Brooks** and **Larson** while **Patricia Powers** is advising down at Yakima Legal Aid. **Jay Inslee** is out in the Selah Winterland with **Doug Peters.**

We find **Walt Week**'s paralegal, **John Monter** has now graduated from Gonzaga and is associated with **Charlie Flower.** John's wife gave birth to a baby girl in January, just missing the tax deadline, so he's not getting much sleep as yet. John has been associated with law for almost all of his life as his mother is a legal secretary for the Velikanje firm. **Reed Pell,** a new addition to the Bar basketball team, is associated with **Jim Hovis. Pat Cockrill** of the Hovis firm indicates that Reed is up to his gazoo in legal research, probably learning all there is to know about Indian Law, as Jim represented the Yakima Indian Nation. Reed is also a returning Yakima native, his parents being orchardists on the West side of Yakima.

Stephen Winfree had an opportunity, according to **Bob Rowley** of Sunnyside, to associate with a brilliant and rising young firm of lawyers in Sunnyside, but not being able to get on with that firm, which shall remain nameless, associated with his compatriots from the University of Oregon, **Bob Rowley** and **Steve Wilgers.** Steve is also a member of the Oregon State Bar Association, having practiced for a year in Eugene and a year in Portland, before seeing the error of his ways and locating in Sunnyside.

Ron Zirkle of Wapato, is still waiting for the weather to clear so he can take his final check ride and get his private pilot's license. Ron, being an orchardist also, instead of going South for two months has elected to learn how to fly.

The Yakima County Superior Court has gone computer. Besides keeping track of the status of each case and the trial settings, it is reported the computer will also keep track of the judge's decision and grade them accordingly. Tours of the facilities are open to any lawyer but it is reported that because of the numerous federal decisions regarding confidentiality, the Judge's grades will be kept top secret. □

PART I: The Inquiry Judge Proceeding and its Limits

CRIMINAL INVESTIGATORY PROCEEDINGS IN WASHINGTON

By **MICHAEL L. COHEN**

Introduction

Of the vast changes in the criminal law we have seen in the past six years, no provision has more significance to the practitioner with little or no criminal practice than the Criminal Investigatory Act of 1971 which created the inquiry judge proceeding. In the past, Washington prosecutors were limited in their ability to obtain testimony and evidence during criminal investigations; this function rested largely with police who would interview potential witnesses and on occasion obtain evidence through the use of search warrants. Now, however, the inquiry judge proceeding gives the prosecutor investigatory tools which are broader in application than civil discovery proceedings and which have all but replaced the cumbersome and infrequently used grand jury.

As a result of the maturation of the inquiry judge proceeding from a blueprint to an accepted institution, prosecuting attorneys throughout our state for the first time have successfully prepared cases involving sophisticated criminal activity; these prosecutions include public corruption, bribery, bid fixing, misappropriation, organized crime, fencing, theft, arson, vice, gambling, prostitution, and securities fraud, bank fraud and real estate fraud. The consequence of this added law enforcement investigative power means that persons and businesses who previously have been on the sidelines of criminal investigations will receive subpoenas to appear, testify and deliver documents to the inquiry judge. As a result of the statewide use of the inquiry judge proceeding, it is now incumbent upon the business, corporate and general practitioner to be capable of advising subpoenaed clients so that the client can appreciate the risks and consequences flowing from inquiry judge proceedings. This article is presented in two parts as follows:

I. The inquiry judge proceeding and its limits.
II. The right of individuals to assert privileges resisting a subpoena duces tecum for business papers, records and documents.

History of the Inquiry Judge Proceeding

Since the advent of Washington statehood, felony criminal cases have been commenced in three ways: 1) through the filing of a criminal *complaint* in justice court before a magistrate who, after a preliminary hearing and upon a finding of probable cause, may cause the matter to be bound over for trial in the superior court; 2) the filing of a criminal *information* in superior court by the prosecutor; 3) the convening of a grand jury and the issuance of indictments upon a showing of probable cause.

The most common procedure has been for the prosecutor to file criminal complaints in justice courts and informations in superior court. The state's grand jury provisions have been cumbersome, expensive and therefore infrequently used. In those instances where grand juries have been called, the journalistic sensationalism accom-

panying the grand jury has on many occasions rendered the sessions unproductive and potentially dangerous to all persons subpoenaed whether called as principals or witnesses. Nonetheless, it was generally recognized that the alternatives to grand juries provided the prosecutors with insufficient means to deal with corruption in government and sophisticated criminal conduct.

As a result of these observations, the Washington Judicial Council formed a legislative reform committee to propose an alternative to the grand jury. The result was the proposal which was enacted in 1971 as the Criminal Investigatory Act. The drafting committee also prepared a report which stated in part:

> After the 1970 special session the Judicial Council reopened its grand jury study. The result of this additional study is the present draft, which contemplates significant reorientation of the grand jury system as it relates to modern society . . .
>
> An additional feature of the proposed statute is the provision for a special inquiry judge. This added law enforcement aid is patterned after the one-man grand jury law of Michigan. However, under the statute proposed for Washington, the special inquiry judge will only sit as an individual officer to hear and receive evidence presented either by the prosecuting attorney, the attorney general, or a special prosecutor appointed by the governor. Special inquiry judge proceedings are viewed by the Judicial Council as supplementary to a regular grand jury . . . The special inquiry judge does not have the power to issue indictments as does the grand jury, but can turn over any evidence produced at the proceedings before him to any subsequent grand juries called pursuant to the statute. Thus, although not actively participating in an investigative role himself, the special inquiry judge provides the prosecutor an added investigatory tool. *This added tool enables the prosecutor to require a person's testimony, under oath, before a judicial officer.* This will aid the prosecutor in his fight against crime by providing him information not generally otherwise available.

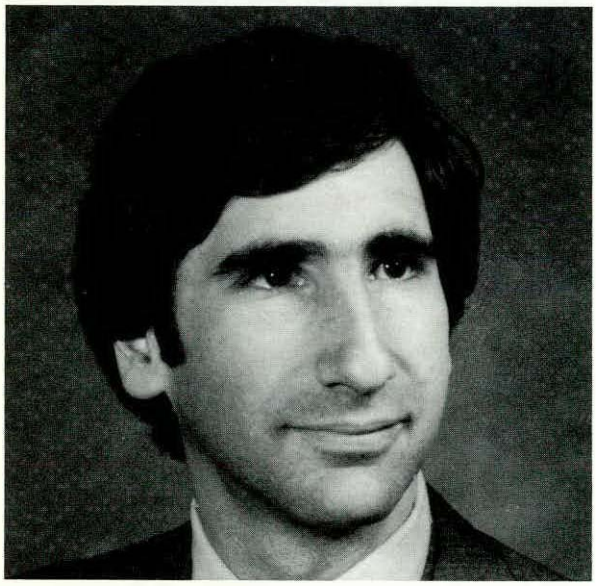
22 Judicial Council Reports (1970) (Emphasis added).

Operation of the Inquiry Judge Proceeding

As codified in RCW 10.27, the Criminal Investigatory Act deals with both grand jury investigations and inquiry judge proceedings. The two proceedings differ in the manner through which they are initiated, the nature of the forum before which the witness testifies or delivers nontestimonial evidence and finally, the means through which the accumulated evidence is translated into charges.

A. Who Is the Inquiry Judge? What Can He Do?

In each county the inquiry judge is a member of the superior court designated by a majority of his or her fellow judges, RCW 10.27.050. The inquiry judge will preside over proceedings looking into criminal conduct and may call witnesses, RCW 10.27.140(3); however, he or she may not initiate an investigation *sua sponte* or file criminal charges. Additionally, the inquiry judge is disqualified from presiding over any subsequent court proceedings which have arisen from an inquiry judge proceeding, RCW 10.27.180. This extends to issuance of arrest warrants in conjunction with the filing of criminal charges, arraignments, bail hearings, omnibus application hearings, suppression hearings, trial or sentencing hearings. Essentially the inquiry judge is present to guarantee the fair treatment of witnesses interrogated by the prosecutor; any charges which are predicated on inquiry judge proceedings are filed by the prosecutor.



Michael Cohen is a 1969 graduate of Georgetown Law Center in Washington, D.C. Mr. Cohen served as a law clerk to Justices Frank Weaver and Morrell Sharp of the Washington Supreme Court. From 1971 through 1976, Mr. Cohen was a deputy in the Fraud and Civil Divisions of the King County Prosecutor's Office and served as assistant chief of the latter. He is presently a partner in the Seattle firm of Logerwell & Cohen which specializes in trial practice.

B. How Are Inquiry Judge Proceedings Initiated? Where? When?

Inquiry judge proceedings are initiated in two ways. The prosecuting attorney may issue subpoenas to compel persons to appear before the inquiry judge when the prosecutor has reason to believe the persons subpoenaed possess information relevent to criminal conduct, RCW 10.27.140(2). As a matter of practice, the King County Prosecutor's office always provides the inquiry judge with a copy of the subpoenas which it issues and a statement setting forth the nature of the investigation to which each subpoena relates.

As an alternative, any public attorney may petition the inquiry judge for an order directing persons to appear and provide information before the inquiry judge, RCW 10.27.170. The petition must allege that "there is reason to suspect crime or corruption within the jurisdiction" of the petitioning public attorney, RCW 10.27.170. This means of invoking the powers of the inquiry judge would extend to city attorneys and the attorney general; however, this alternative has been infrequently used. Usually the prosecuting attorney initiates the investigation.

While the county in which the suspected crime may have occurred is ordinarily the place in which an inquiry judge proceeding is commenced, it is not the sole place where proceedings can be commenced. Upon application to the inquiry judge of another county in which a portion of a suspected criminal transaction occurred, an inquiry judge proceeding may be initiated for the purpose of obtaining evidence which may be used in the prosecution of a defendant in the initiating county. RCW 10.27.190 provides, in part:

> With the concurrence of the special inquiry judge and prosecuting attorney of the

> other county, the special inquiry judge may direct the public attorney to attend and participate in special inquiry judge proceedings in the other county, held to inquire into crime or corruption under investigation in the initiating county.

Therefore, it is incumbent upon the attorney for persons subpoenaed to appear before the inquiry judge to determine where the locus of the criminal investigation is.

Inquiry judge proceedings may not be initiated to investigate a previously charged defendant. The State Supreme Court has held expressly that inquiry judge proceedings are only investigative in nature and once a criminal proceeding has been commenced through the filing of an information, *State v. Burri,* 86 Wn.2d 176, 543 P.2d 237 (1976), or even after the filing of a complaint in justice court, *State v. Manning,* 86 Wn.2d 272, 543 P.2d 632 (1975), the use of the inquiry judge proceeding to obtain testimony or evidence is inappropriate:

> We conclude that the statute RCW 10.27 does not authorize use of the special inquiry proceeding to discover or gather evidence against an already charged defendant, as to crimes already charged.

State v. Manning, Supra, at 275.

In the *Manning* case, the inquiry judge was used to obtain evidence pertaining to a criminal complaint filed in Spokane Justice Court. Thereafter the defendant, against whom the evidence was sought, was charged by information in superior court. The defendant sought to suppress the evidence obtained in the inquiry judge proceedings and the court, on appeal, affirmed the suppression of evidence obtained through the inquiry judge proceeding. In the *Burri* case, however, the remedy applied by the court was substantially different. The prosecutor in *Burri,* pursuant to RCW 10.27.190, used an inquiry judge proceeding to interrogate a defense witness who was then residing in another county. The court affirmed a dismissal of the criminal charges against the defendant, but did not predicate the dismissal on the misuse of the inquiry judge proceeding as such; rather, the court determined that instructions to the defense witness not to reveal the

nature of his testimony before the inquiry judge, given by the prosecutor and by the inquiry judge court, constituted an obstruction of the defendant's right to prepare for trial.

C. What Are the Rights of Persons Called Before the Inquiry Judge?
Are the Proceedings Confidential?

Statutory provisions deal with the rights of persons called before an inquiry judge to give testimony or to provide evidence and specifically limit the persons who are entitled to be present at the time of an inquiry judge proceeding:

> No person shall be present at sessions . . . of the special inquiry judge except the witness under examination and his attorney, public attorneys, the reporter. . .

RCW 10.27.080. To insure secrecy the courtroom doors are locked during inquiry judge proceedings.

Each person appearing before the inquiry judge is admonished by the court not to disclose the testimony of any witness given in the inquiry judge proceeding, RCW. 10.27.090(3). The obvious reason for secrecy is to protect subpoenaed persons so that they do not suffer indignity, intimidation or stigma as the result of the proceeding.

A witness or principal is entitled to have counsel present within the courtroom while testifying; however, the role of legal counsel in an inquiry judge proceeding is specifically limited by statute:

> The attorney advising the witness shall only advise such witness concerning his right to answer or not answer any questions and the form of his answer, and shall not otherwise engage in the proceedings.

RCW 10.27.080. Clearly, under this statute, the witness's attorney has no right to examine his client for the purpose of making a record, nor has he any right to object to any questions asked by the prosecution or other public attorney as part of the investigation. If the attorney directs his client to refuse to answer any question, the witness may be found to be in contempt of court unless the witness is asserting his privilege against self-incrimination.

D. Can the Inquiry Judge Grant Immunity?

Any person called before the inquiry judge who chooses to exercise his privilege against self-incrimination may be immunized from prosecution, and if immunized, may be compelled to testify. The determination of whether or not to grant immunity is made by the court, but *only* upon application of the prosecution certifying that immunity is in thepublic interest, RCW 10.27.130. Immunity hearings are also confidential and secret, unless the witness elects a public hearing, RCW 10.27.130. The immunity granted pursuant to this statute is transactional; that is, it renders the defendant immune from any prosecution based on facts related to the investigation with the exception of perjury or offering false evidence, RCW 10.27.130. See also *State v. Harville,* 10 Wn. App. 498, 518 P.2d 730 (1974) aff'd *per curiam;* 84 Wn.2d 496, 527 P.2d 479 (1975).

A person subpoenaed before the inquiry judge has the right to be advised of his privilege against self-incrimination, whether called as a witness or as a principal, RCW 10.27.120. A principal under the RCW 10.27.010 ". . . shall mean any person whose conduct is being investigated by a grand jury or special inquiry judge." A principal is treated no differently under the terms of the statute than any other person; however, because the statute specifically distinguishes between witnesses and principals, it is my view that persons who are being investigated have a right to be so advised before choosing to give testimony or to exercise their privilege against self-incrimination. Cf. *State v. Harville, supra.*

If the nature of the investigation concerns bribery or public corruption, then the immunity provisions of 10.27.130 do not apply. In such an instance, a witness appearing before the inquiry judge is *automatically* cloaked in immunity and has no right to exercise the privilege against self-incrimination, as the result of separate and older statutes contained now in RCW 9.18.080 and RCW 10.52.090 *State v. Morton,* 14 Wn. App. 598, 544 P.2d 50 (1975). In *Morton,* the Supreme Court applied the rule, first stated in *State v. Carroll,* 83 Wn.2d 109, 515, P.2d 1299 (1973), that the immunity procedures in RCW

10.27.130 are inapplicable to investigations of corruption, and held:

> We hold that the immunity conferred by RCW 10.52.090 and RCW 9.18.080 applies to any witness who testifies in response to a subpoena before a grand jury or *Special Inquiry Judge,* whether he is regarded as an informer against another, or as was the case here and in *Carroll,* as a potential defendant to a bribery or corruption charge.

14 Wn. App. at 601. In such an instance, it is irrelevant whether the person testifying is warned of his rights against self-incrimination before he testifies, or whether no warnings are given. The act of testifying in an investigation of bribery corruption before the inquiry judge gives immunity to all persons, whether they be witnesses or principals.

E. Can Evidence and Testimony Obtained Pursuant To the Inquiry Judge Be Used in Other Proceedings?

The state has access to all inquiry judge evidence and is not limited to using such evidence in a criminal prosecution:

> The public attorney shall have access to all grand jury and Special Inquiry Judge evidence and may introduce such evidence before any other grand jury *or any trial* in which the same may be relevant.

RCW 10.27.090(4), (emphasis added).

Clearly this provision permits the state to introduce such evidence in civil proceedings which may grow out of a criminal investigation.

Upon proper application to the court, a witness may also obtain transcripts of testimony:

> Any witness testimony given before a grand jury or a Special Inquiry Judge and relevant to any subsequent proceedings against the witness, shall be made available to the witness upon proper application to the court.

RCW 10.27.090(5).

A defendant in a criminal proceeding may also obtain, upon a proper showing, any evidence or any person's testimony initially presented to an inquiry judge, RCW 10.27.090(5)(a).

The secrecy provisions of the inquiry judge statute do not declare that *evidence* as opposed to *testimony* obtained in the course of an inquiry judge proceeding is secret. Therefore, documents and records in the hand of the prosecutor may be subject to subpoena *duces tecum* for trial or discovery in administrative proceedings, civil discovery, or in a civil trial.

Conclusion

With this explanation of the Criminal Investigatory Act the practitioner should have a better perspective of the latitude and limits of inquiry judge proceedings and some appreciation of the risks and exposure of persons who are subpoenaed to appear before an inquiry judge. While I have not attempted to deal with all of the complex problems which may arise in the course of a criminal investigation, it is hoped that this memorandum will provide sufficient information so that the non-criminal law practitioner may be able to intelligently advise a person or corporation which may be called upon to provide evidence or give testimony before an inquiry judge. NEXT MONTH: PART II. □

An Updating to Fit Today's Needs

SWEEPING CHANGES IN NEW IMMIGRATION LAWS

By **DAN P. DANILOV**

On January 1, 1977, the Immigration and Nationality Act Amendments of 1976 have gone into effect.[1]

The most sweeping changes in our Immigration Laws since 1965 will rectify the long-standing inequity between the Eastern and Western Hemispheres by instituting identical preference systems and allocating 20,000 visa number ceilings for any country, including Mexico. Since January 1, 1977, the Preference System of Immigration and Nationality Act of October 3, 1965[2] has been extended to all nationals of the Western Hemisphere in the same manner as the Act of October 1965 was extended to the nationals in the Eastern Hemisphere, as follows:

1. First Preference — unmarried sons and daughters of U.S. citizens.
2. Second Preference — spouses and unmarried sons and daughters of aliens lawfully admitted for Permanent Residence.
3. Third Preference — members of the professions or persons of exceptional ability in the sciences and arts.
4. Fourth Preference — married sons and daughters of U.S. citizens
5. Fifth Preference — brothers and sisters of U.S. citizens.
6. Sixth Preference — skilled and unskilled workers in short supply.
7. Seventh Preference — refugees.
8. Non-Preference — other immigrants: numbers not used by the Seventh Preference Category.

In addition, the adjustment of status under Section 245 of the Immigration and Nationality Act, as amended, will allow certain aliens who have been inspected and admitted into the United States (within the discretion of the Immigration and Naturalization Service) to adjust their status within the United States from a non-immigrant visa status to that of an alien lawfully admitted for Permanent Residence.

Section 6(c) of the new amendments, however, shall *bar* the privilege of adjustment of status to any alien other than an "Immediate Relative" (that is, the under 21 year-old unmarried children, spouses and parents of over 21 year-old United States-citizen children) who, after January 1, 1977, continue in or accept unauthorized

[1]Public Law 94 - 571 and HR 14535. See also Proposed Rules for New Regulations by I.N.S. - Fed. Reg., Vol. 41, No. 220, at pages 49994 to 50000.

[2]Public Law 89 - 236.

employment prior to filing an Application for Adjustment of Status.

Therefore, any aliens who, prior to January 1, 1977, are engaged in unauthorized employment and have not filed an Application for Adjustment of Status must cease their employment immediately until they have filed an Application for Adjustment of Status with the Immigration Service or receive "Employment Authorized" on Form I-94 (Arrival/Departure Record). If they do not, they will not be eligible for adjustment of status in the United States and will have to process their Immigrant Visa Applications at an American Consulate abroad which can be very time-consuming and expensive as it will be necessary for the aliens to return to their homelands for that purpose.

Under the new amendments, a brother or sister in the United States who is a native-born or naturalized citizen of the United States will now be able to petition for his or her brother or sister from any country in the Western Hemisphere, a procedure which was not available during the period from 1965 until December 31, 1976. In cases of brothers and sisters under the Fifth Preference, the United States citizens must be 21 years or more to petition for their brothers and sisters to be admitted into the country. The married sons and daughters of United States citizens who were born in any country of the Western Hemisphere may now be petitioned and admitted into the United States by their United States-citizen parents. Further, the spouses and unmarried sons and daughters of Lawful Alien Permanent Residents in the United States may be reunited with their families in the United States.

The new changes in the immigration laws will also remove the exemption from the Labor Certification requirement (which the parents of Western Hemisphere countries who had a child born in the United States have received as "Special Immigrants") so that Western Hemisphere parents of a child born in the United States will no longer receive immigrant visas. At the same time, however, the "baby cases" which have been registered by these parents with American Consulates prior to December 31, 1976, will retain their exemption as "Special Immigrants" to apply for Immigrant Visas when their turns are reached on the Visa Waiting List.

The recent amendments also provide that Third Preference applicants must demonstrate that their services are sought by an employer in the United States, and therefore, the prospective employer must file an Application for Labor Certification and a Third Preference or Sixth Preference Visa Petition with the Immigration Service.

The new amendments to the Immigration and Nationality Act of 1976 also amend the Labor Certification requirements of Section 212(a)(14) as follows: (1) Domestic workers must be *equally* qualified for certification to be denied in the cases of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts; (2) Whether there are "sufficient workers" in the United States has been amended to delete the phrase "in the United States" by modifying "at the place" where the alien is going, rather than the United States as a whole; (3) Labor Certifications will be required for all aliens under the two occupational preferences of Section 203(a)(6) and Section 203(a)(8) for their entry into the United States to work.

In accordance with the new laws which Congress has passed in the 94th Session, the Depart-

DAN P. DANILOV has graduated from the University of Washington Law School. He was admitted to the Washington Bar in 1958, and he has been in private practice in Seattle since 1960. He has specialized in the field of Immigration and Naturalization Laws during the past 16 years.

ment of Labor has also given notice on November 5, 1976, to propose new regulations governing the labor certification process for the permanent employment of aliens in the United States.[3] The new regulations were promulgated on January 18, 1977, effective on February 18, 1977.

The proposed Regulations, designated 20 C.F.R. Part 656, are intended to replace the Labor Department's present regulations at 29 C.F.R. Part 60, entitled "Immigration; In Regard to Labor Certifications." These proposed regulations are being issued under Section 212(a)(14) of the Immigration and Nationality Act, which provides that certain aliens may not obtain a visa for entry into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified, by granting a Labor Certification (1) there are not sufficient United States workers, who are able, willing, qualified, and available to perform the work; and (2) the employment of the aliens will not adversely affect the wages and working conditions of United States workers similarly employed.

The new regulations propose necessary technical changes to conform with the intent of Congress in amending the immigration laws and instituting a new method of administrative review which one prominent immigration attorney has described "hopelessly unworkable."[4]

On January 11, 1977, the new provisions of the Health Professions Educational Assistance Act of 1976,[5] which amend the Immigration and Nationality Act, will also go into effect. In the preamble of "Findings and Declaration of Policy", it is stated in the Act that, "The Congress further finds and declares that there is no longer an insufficient number of physicians and surgeons in the United States such that there is no further need for affording preference to alien physicians and surgeons in admission to the United States under the Immigration and Nationality Act." Therefore, if a foreign medical graduate has not received his Immigrant Visa before January 9, 1977, he would be subject to a much stricter requirement of Title VI and would, at the present time, be unable to immigrate to the United States for the reason that Title VI of the Health Professions Educational Assistance Act of 1976 prevents the admission of aliens to the United States as immigrants who, after January 10, 1977, are graduates of a medical school and are coming to the United States principally to perform services as members of the medical profession, except aliens who have passed Parts I and II of the National Board of Medical Examiner's Examination (or equivalent examination as shall be determined by the Secretary of Health, Education and Welfare) and who are competent in oral and English language. Interestingly, no person can take Parts I and II unless he is a graduate of an accredited United States or Canadian medical school.

The Health Professions Educational Assistance Act of 1976 in Section 601(c)(4)(2) also denied, after January 11, 1977, foreign medical graduates who came to the United States on exchange visitor's visas, or acquired such status after coming to this country, from receiving waivers of the

[3]Proposed Rules for New Regulations by Department of Labor — Fed. Reg., Vol. 42, No. 12, at pages 3440 to 3451.

[4]The New York Law Journal — Nov. 30, 1976, Vol. 176, No. 103.

[5]Public Law 94 - 484.

two-year foreign residence requirement of their exchange visitor visa. Previously, this was possible if the applicant obtained no objection letters from the Government or the country of their nationality or last residence which were necessary in order to receive approval for Permanent Residence status in the United States. Under the new law, all such waivers must have been granted and filed with the Department of State before January 11, 1977, if the applicant is to qualify for Permanent Residence.

The Department of State has also published a Notice of Proposed Ruling-Making[6] to signify its desire to change its regulations pertaining to the ineligibility for visas of aliens likely to become public charges. Such aliens could provide Affidavits of Support from their relatives or friends to assure the American Consul that they will not become public charges in the United States, however, it is now proposed by the Department of State to establish a unilateral agreement which would contractually bind a sponsor to repay to the United States, or to any State, territory, county, town, municipality or district any public assistance money which such a governmental entity has paid to the sponsored alien.

A very important policy of the Immigration and Naturalization Service which has been in existence since April 11, 1973, should be brought to the attention of all lawyers. On December 17, 1976, the Immigration and Naturalization Service issued guidelines, in the form of written questions and answers, containing the provisions of Public Law 94 - 571. Among the initial statements of the Immigration Service's position is the following guideline:

> Q. Under existing Service policy, voluntary departure may be granted a statutorily eligible native of an independent country of the Western Hemisphere or the Canal Zone who is admissible to the United States as an immigrant and who has been in the United States since a date prior to April 11, 1973, and who immediately prior to April 11, 1973 was and continues to be an immediate relative of a United States citizen, or the unmarried son or unmarried daughter of a United States citizen, or the spouse or unmarried son or unmarried daughter of a lawful permanent resident alien. Is there any change in this policy in the light of P.L. 94-571?
>
> A. Yes, the crucial date of April 11, 1973 for a grant of extended voluntary departure is extended to January 1, 1977.

It is suggested that every attorney who is consulted by aliens for assistance in an immigration case should refer to the latest Public Laws of Congress and all the Proposed Regulations promulgated by the Department of Justice, Department of Labor, and Department of State, as well as such legislation contained in non-immigration laws (e.g. Health Professions Educational Assistance Act of 1976 — Public Law 94 - 484) which attached new laws relating to immigration in the Act. □

[6]Proposed Rules for New Regulations by Department of State — Federal Reg., Vol. 41, No. 174, at pages 37591 to 37592.

Section Reports

ENVIRONMENTAL AND LAND USE LAW

By **LEE KRAFT**

The Environmental Law Board at its December 1976 meeting voted to change the same of the Section to the Environmental and Land Use Law Section. This action was approved by the Board of Governors on January 22, 1977.

The Board proposed this name change in order to attract additional membership in the Section of lawyers who are involved in zoning and environmentally related land use issues but do not practice environmental law in its specialized sense. Annual dues are $5.00. Members receive copies of the Environmental Newsletter. This newsletter discusses recent environmental law cases before the Superior Court, as well as, Appellate Courts. Administrative Board decisions are also reviewed along with proposed legislation.

Back issues of the Environmental Newsletter dating from Jan. 1974 to Aug. 1976 are available for a nominal fee of $3.00. Please send membership dues and order for back issues of the Environmental Newsletter to Cassie Morris Cole at the Washington State Bar Association, 505 Madison St., Seattle, WA 98104.

CORPORATION, BUSINESS & BANKING

By **DENNIS G. SEINFELD**

The Executive Committee met on January 15, 1977 and tentatively approved the format for the Richland annual meeting scheduled for Friday afternoon, May 20, through the following Sunday noon. The seminar and the accompanying annual meeting for the Section will be held at the Hanford House, the same location as the past two years.

Scheduling will be arranged to provide adequate non-seminar time to permit golf, tennis, swimming or whatever other recreational activity may suit your pleasure! The program will also include a cocktail party and a hosted wine tasting party.

Each person in attendance will receive credit toward the compulsory legal education requirements. The maximum credit hasn't yet been determined, but the committee believes that full attendance will earn 11 hours' credit.

Only 250 registrations will be accepted, so section members should as quickly as possible send their $50.00 registration fees.

Tentatively, the program will include the following, with the specialty programs running simultaneously on Sunday morning:

General Business and Tax Problems

A Review of the Law of General and Limited Partnerships
Tax Problems of Operating as a Partnership
Tax Consequences of Going in and Getting Out of Partnerships
The Business Enterprise in Estate Planning
Tax Changes for the Business Enterprise under the Tax Reform Act of 1976
Introduction to the Law of Securities

For the Securities Lawyer

An Overview of Recent SEC Cases
Plaintiff's, Defendant's, and Government's Remedies Under and Apart from § 10 (b)-5 in the Light of *Hochfelder*
Securities Malpractice Insurance for Lawyers
State Securities Regulation

For the Agricultural Business Lawyer

Buy-Sell Agreements for Agricultural Corporations
Employment Agreements and Related Fringe Benefits
Real Estate and the Agricultural Corporation

For the Banking & Thrift Institution Lawyer

Usury and the Rule of Seventy-Eights
Garnishments, Attachments, Liens, Levies and Other Governmental Process and Bank's Duty of Confidentiality
Highlights in Current Legislation and Regulation regarding Truth in Lending, Fair Credit Billing Act, Equal Credit Opportunity Act, Holder in Due Course

Karl Ege, our Newsletter editor, continues to solicit short articles of interest to the business lawyer. This includes both the general business practicioner and the specialist. He would appreciate your sending him your proposed articles. If any of you would be willing to write but have no specific topic in mind, give Karl a call or dop him a note, and he will be most pleased to assign a

topic. Karl can be reached at Bank of California Center, Seattle, 98164, 682-5151.

CRIMINAL LAW

By **EDWARD G. HOLM**

The fun is just beginning on mandatory sentencing. The members of the Bar Association have a responsibility to get involved and to lead the debate either for or against these proposals. The members of the Bar Association have been strangely absent from involvement with the exception of a few who are involved in the politics of mandatory sentencing. The following is a summary of the present bills which are being introduced in the Legislature and an initiative proposed by a committee headed by Kent Pullen, a South King County Legislator. Although these are not the only changes proposed, they seem to be a cross-section of the bills which will be worked on during the coming Legislative Session.

Summary of Initiative 56

1. Changes only of felony sentences.
2. *Class A Felonies:* Minimum five years, no deferral or suspension, board has no power below the five years to release, work-release, or furlough, ten years minimum if defendant has been convicted of prior felony within 15 years prior.
3. *Class B Felonies:* Minimum two years, 4 years if prior felony within 15 years prior, no deferral or suspension, board has no power below minimum to reduce sentence, work-release, or furlough.
4. *Class C Felonies:* 2 year minimum if prior felony within 15 years prior, no deferral or suspension, board has no power to reduce minimum, work-release, or furlough, other sentencing of Class C Felonies or first time offender are not affected under present law and may be suspended or deferred.

Bayley's Proposal

1. Applies only to felony sentencing.
2. Deferred and suspended sentences abolished. Probation as a sentencing alternative eliminated. A period of total confinement must be imposed for conviction of Class A or Class B felonies. A period of partial confinement may be required for conviction of Class B and Class C felonies.
3. Sentencing judge required to set a determinate sentence within sentencing ranges adopted by a Board of Criminal Sanctions. Judge may sentence outside of sentencing range in appropriate cases subject to appellate review.
4. Board of Criminal Sanctions established to determine sentencing ranges for offenses with legislative review and modification permitted.
5. Dangerous prisoners can be held in total confinement up to three years beyond their release date if the committing court determines their release would be physically dangerous to the public.
6. Two years added on to sentence for commission of a felony with a deadly weapon (3 years if a firearm). Repeat offenders may be subject to penalty enhancements as per schedule adopted by the Board.

HB 1535 Features

1. All persons convicted of classified felonies and misdemeanors to be sentenced to a determinate term of confinement.
2. Judge to fix the term of confinement within sentencing range provided for each class of offense. Judge cannot sentence outside the range.
3. Extended terms possible for felons presenting a continuing risk of physical harm to the public and certain repeat offenders as defined.
4. Sentencing ranges:

	Standard Term	**Extended Term**
A^1 Felony	10 mo. + 1 mo.	4 yrs. + 4 mo.
A^2 Felony	3 yrs. + 6 mo.	6 yrs. + 1 yr.
B^1 Felony	45 days + 5 days	1 yr. + 3 mo.
B^2 Felony	6 mo. + 2 mo.	3 yrs. + 1 yr.
C^1 Felony	20 days + 5 days	2 mo. + 1 mo.
C^2 Felony	30 days + 5 days	6 mo. + 3 mo.
Gross Misdemeanor	15 days + 5 days	
Misdemeanor	7 days + 3 days	

It is obvious from the Legislative hearings that the committees feel that there *will* be a mandatory sentencing bill going through. The attorneys of the state should give the Legislature their input so that a bill will evolve which will be a benefit to our system of justice and not a detriment. □

Briefly Noted

Board Elections Due

Lawyers residing in the Second, Fourth and Seventh 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 Charles R. Olson, Second District, Robert R. Redman, Fourth District, and David D. Hoff, Seventh District.

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

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

The petition must be filed in the Bar Office by 5 p.m., Tuesday, May 31, 1977.

Workshops

The Greater Seattle Legal Secretaries Association will present the following workshops at the Washington Natural Gas Company, 815 Mercer Street, Seattle, from 10:00 a.m. to 1:00 p.m. Interested persons may contact Margaret Foote (622-6767, Ext. 470) or Janet Fribert (284-6538/home) for more information. The cost to nonmembers will be $4.

February 26, 1977 — Litigation Lowdown

Speaker: John C. Coughenour of Bogle & Gates. A training period to cover the specialized uses of legal secretaries for litigation purposes will be emphasized. A video tape of an actual trial will also be shown.

March 12, 1977 — Real Estate and Foreclosures

Speakers: Byron D. Coney, Attorney; Lori Graeff and Anita Fullwiler, Legal Assistants of Dodd, Hamlin and Coney, P.S.

Symposium on Courts and the Constitution

Fairhaven College at Western Washington State College will sponsor a public dialogue on the relationship of the U.S. Constitution and the court system in this country.

The three-day public symposium will be held in Bellingham from April 15-17, 1977, using facilities of the Whatcom County Museum of History and Art, WWSC's Main Auditorium and Fairhaven College.

Project co-sponsors are the Institute for the Study of Contemporary Social Problems and the League of Women Voters.

The program is designed to relate public policy issues with the humanities using the career and opinions of former U.S. Supreme Court Justice William O. Douglas as a model.

The program also calls for a number of community response workshops, issue discussion groups, and a folk song concert entitled "Oh, Freedom." A panel discussion on "Human Values, the Law and Religion" will close the program.

Notices

Charge to be Levied for Future Classified Advertising Notices

Due to increased volume, a charge will be required for publishing classified advertising material in the "Notices" section of the *Bar News*.

Beginning with the April 1977 issue, the basic per-issue charge for publishing classified advertising will be $5.00 for the first twenty-five words and 50¢ per word for each additional word. The minimum charge will be $5.00. An additional per-issue charge of 2.00 will be made if confidential reply service is requested. Payment in advance will be required.

Classified advertising rates have been made necessary by the increasing volume of requests being received and the resulting costs of handling and production.

As in the past, only classified advertising from members of the Washington State Bar Association will be accepted for publication. For those interested in advertising, the *Bar News* circulation has grown to approximately 8,000, including all active lawyers and all judges in Washington State.

For Sale: Unopened CCH Pension Plan Guide together with all supplementary material. Make offer. Contact Gordon L. Bovey, N. 3400 Monroe St., Spokane, WA 99205, phone (509) 326-6656.

For Sale: ALR's, 1st, 2nd and 3rd addition. For further information, call 272-9303.

For Sale: IBM Executive Mag Card typewriter, 1974, excellent condition, and CPT typewriter, 1973 with updated features, excellent condition. Please contact Nan Peterson at (206) 623-8433.

For Sale: Complete set of U.S. Supreme Court Reports (Law. Addn.), 1st and 2nd series with Index. $1,000. Call 357-9776, Olympia.

For Sale: Washington Reports, Wn.2d and Wn. App. Good condition. Call (206) 454-2672, Bellevue.

For Sale: Used dictation equipment, ideal for 2-man law office. 2 portable Memocord dictating machines, 1 secretarial transcriber complete with all accessories $395 (about ½ list price). Call 682-6506. Ask for Marty.

For Sale: Record-a-Call Remote 80, new June, 1976; complete set of RCWA and Washington Practice Series, new May, 1976; will deliver; call 888-1136/Wendy 455-3252.

For Sale: C.J.S., excellent condition current. $750.00 or best offer. 624-3600.

For Sale: Washington 2d Reports (Vols 48-85). 678-4111.

Wanted: Washington Reports 2nd, Washington Session Laws, Restatement of Torts, Restatement of Agency, and Couch on Insurance. Contact Nick Harvey, 383-5388, Tacoma.

Wanted: DeJur Grundig Stenorette recorder and tran-

scriber in good working order manufactured after 1967. Contact Whitmore & Warren, P.O. Box 1885, Wenatchee, Washington 98801. (509) 663-7186.

Trying to Locate: Anyone familiar with the signature of an attorney named J. Will Jones who, prior to his death in 1955, practiced law in the Lowman Building in Seattle, Washington. Would anyone who is familiar with Mr. Jones' signature please call (509) 884-3551, collect.

Will Sought: Would anyone with information concerning the last will and testament of Lulu L. Sharyer of 119 of Harvard E., Seattle, WA please contact her sister, Mary Jane Utman at 19515 26th Avenue N.W., Seattle, WA 98177, 542-3736 or Myrtle Kvangnes of 1714 Hewitt, Everett, WA 98201, 252-2520.

Space Available: In Sea-First Bank Bldg., for one or two attorneys. Attorney(s) to share all facilities with firm specializing in patent, trademark and copyright law. Furnished or unfurnished. 624-2460.

Space Available: Single space in new offices in Bank of California Center. Small firm engaged in General Practice. Excellent library, mag card, secretary, bookkeeping, telephone, bond copier. Furnished or unfurnished. Telephone Biff Crane at 623-2468, Seattle.

Space Available: Excellent office sharing arrangement in Bellevue. Complete library, choice location. Contact Les Wahlstrom 455-3252. □

Mar. 18 thru 19	CLE Seminar: **Legal Aspects of US-Canadian Business Transactions,** $100, Empress Hotel, Victoria B.C.
Mar. 25	CLE Seminar: **Creditor-Debtor Rights/Remedies,** $25, Sea-Tac Motor Inn, Seattle
Apr. 1 thru 2	CLE Seminar: **Defense of a Criminal Case III,** Olympic Hotel, Seattle
Apr. 8	CLE Seminar: **Creditor Debtor Rights/Remedies,** $25, Spokane-Sheraton Hotel, Spokane
Apr. 8	CLE Seminar: **Land Use & Environmental Practice,** $35, Leopold Hotel, Bellingham
April 15	CLE Seminar: **Land Use & Environmental Practice,** $35, Olympic Hotel, Seattle

Lawyer Placement

1. "Business" lawyer wanted for progressive Southwest Washington firm: UCC, IRS, Corporate Structure and Finance. Please write Box 101, c/o The State Bar Office.

2. The City of Pasco is now accepting applications to fill the position of full-time City Attorney. The City will review all applications but will give greater consideration to persons with experience in government law at the municipal, county, state or federal level, or experience in private practice. Salary: $24,000-$28,000 depending upon experience. Write to: City of Pasco, P.O. Box 293, Pasco, WA 99301.

3. Young Lawyer wanted for 6 man law firm in Longview, WA. Qualifications: Member of WSBA with 2-3 years experience in trial work. Call: Harry Calbom — 425-2231 in Longview.

4. Position open for a full-time civil deputy prosecuting attorney of Island County (Whidbey Island). Salary: $14,000-$15,700 depending upon experience. The person hired must stay with the office at least two years. Resumes and a writing sample should be sent to: David F. Thiele, Prosecuting Attorney, Courthouse, Coupeville, WA 98239.

5. A CETA position is open in Clallam County (Pt. Angeles). Qualifications: Member of the WSBA, must meet CETA requirements. Salary: $833 per month. Respond c/o Box 13, WSBA, 505 Madison St., Seattle, WA 98104.

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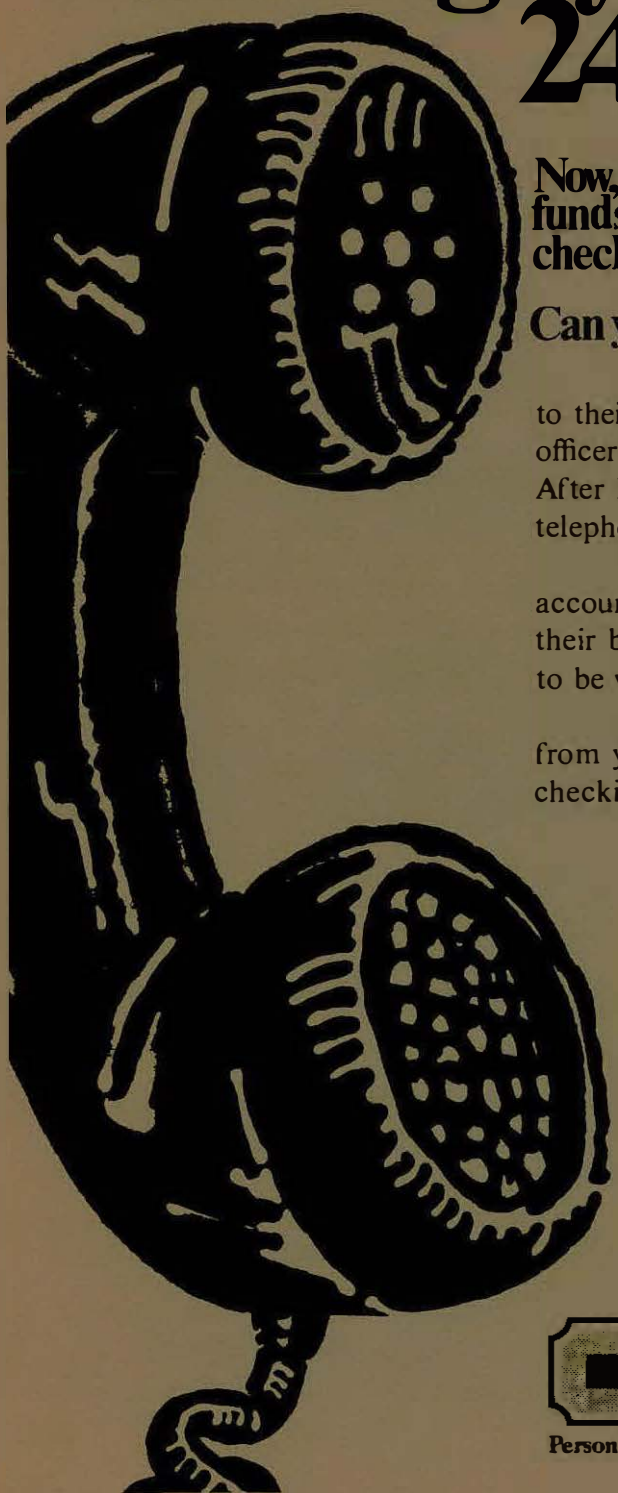

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