Volume 32, Number 5
May, 1978

WASHINGTON STATE BAR NEWS

ch 17, 1978

THE BAR EXAM: THE REPORTS

The Problem

All members of our society should have access to participation in our lega stem if they have the necessary qualifications to serve the public and if y are willing to maintain the high ethical standards required of officers o r courts.

Non-white applicants in Washington, however, fail the bar exam in far eater numbers, proportionally, than do white applicants. Only about one- ird of minority applicants pass, while three-fourths of white applicants pa y? The bar has attempted to explore this problem; however, it has not yet rovided solutions. Washington Women Lawyers believes that further explorati s badly needed and that solutions acceptable to all segments of our society ust be found. Washington Women Lawyers does not believe that it is in the ublic interest to permit unqualified persons to practice law. It seriously uestions, however, the present method by which qualifications to practice l re measured.

The Reports

Two committees assigned to address this problem submitted their reports the Board of Governors in 1977 (the "Grim" and "Zilly" reports). Neither report answers the question of why the minority pass rate is low.

The Grim Report: The Grim Committee was asked to look at the format an content of the bar exam in the context of fairness to minority applicants; however, the committee limited its report to the subject of exam procedure, did not look at the substance of the exam.

The Zilly Report: The Zilly Committee studied the problem of minority failure by scrutinizing the University of Washington Special Admissions pr The report raises many questions, but unfortunately does not answer the fu mental question: why do law school graduates who are of non-white ethnic racial background do so poorly on this state's bar exam, when their white counterparts do so well? Some provocative questions were raised but not answered by the Zilly report:

1) Specially admitted students are "predicted to fail" (low LSAT sco lower undergraduate GPA's), yet 31% of those students pass the ba exam. Why?

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WHY DO SO MANY MINORITIES FAIL THE BAR?

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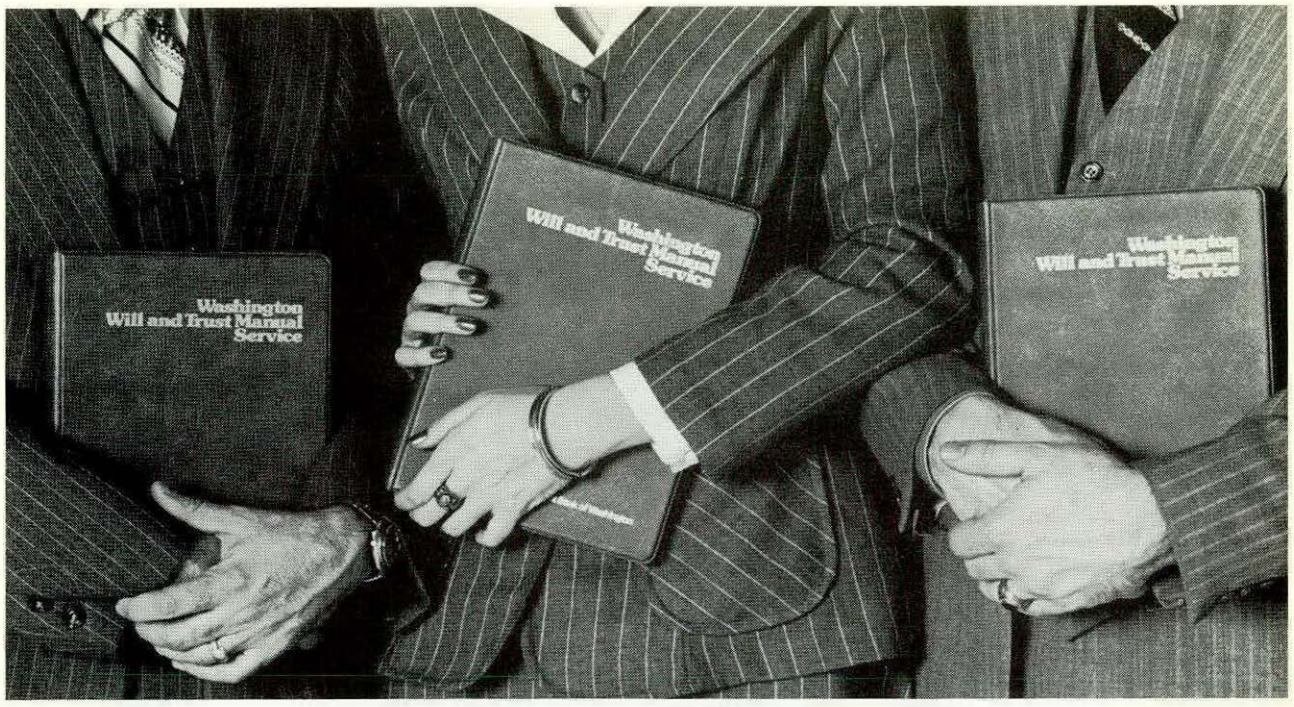
WASH 578



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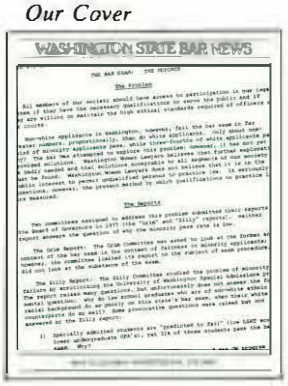
FEATURES

IN THE NEWS

DEPARTMENTS

Our Cover


WASHINGTON STATE BAR NEWS

Pictured on our cover is a portion of one of the supporting documents prepared by the Washington Women Lawyers to accompany their recent request that the Board of Governors order a study to determine the validity of the bar exam and the reasons why minority applicants fail the bar in disproportionate numbers. WWL has submitted a report that is highly critical of prior bar association studies in this area. For the editor's report, see page 17.

See Lawyer Before Signing

Editor:

I previously forwarded a letter to the attention of the Ethics Committee because I had had three instances where a Property Settlement Agreement, prepared by an opposing counsel, was given to my client and she was convinced she should sign it before she even talked to me or consulted with me. The Property Settlement Agreement was never forwarded to my firm. Today, I have the fourth one, only my client this time called to find out whether it was valid or not.

Would you please run an article in the *Bar News*, reminding attorneys that this type of conduct is not appropriate, and it just lowers the standard of the Bar.

BERNICE JONSON
Seattle

"Joint Custody" Article Praised

Editor:

Thank you for the excellent article by Stephen M. Gaddis, "Joint Custody of Children: A Divorce Decision-Making Alternative," in the March issue. [*Bar News* 32:3:10] I found it thoughtful and very useful. It will be required reading for all my future clients who are considering this approach to the settlement of child custody and support questions.

RONALD E. CULPEPPER
Tacoma

Editor:

Being divorced and the father of two daughters, aged 7 and 5, I read with great interest the recent article by Stephen Gaddis on the subject of Joint Custody. For the last three years I have shared custody of my daughters with their mother. This voluntarily created arrangement has included alternating physical custody.

Based on results to date I heartily endorse such an arrangement in situations where the parents post dissolution relationship is amiable.

By the same token joint custody is most apt to foster cordial and working relationships between the divorced parents with the children being the biggest beneficiary.

Hopefully courts and lawyers will continue to give increasing consideration to this alternative. It does work.

RICHARD M. STANISLAW
Seattle

"Custody" Author's Postscript

Editor:

I am writing this letter as a postscript to my recent *Bar News* article on joint custody. It is worthy of note that in these past several days, I have received numerous calls and letters from Washington lawyers across the state, recounting their own positive experiences with joint custody. This underscores my premises that the concept of joint custody enjoys broad based support from the community; that it

is possible to legally provide for continued coparenting after divorce; and that joint custody has received less public recognition since the successful cases are less visible to the bar and bench — they do not return to court for redetermination.

I would like to take this opportunity to thank each of those persons who has written or called expressing interest and willingness to make this concept a reality.

STEPHEN M. GADDIS
Seattle

New Ten Year Social Security Law for Divorced Wife

Editor:

Next time I represent the 40 year old wife in a proceeding for dissolution of her 19½ year marriage, I will not worry about delaying the finalization of the matter to the 20th year to secure valuable Social Security benefits for the wife. Contrary to the prevailing opinion in the legal community, a divorced wife 62 or older (filing for Social Security benefits after January, 1979) can get benefits on her ex-husband's Social Security record if he's getting payments, and if her marriage lasted at least ten years, and if she is a surviving divorced wife, survivor's benefits can start as early as age 60 (or 50 if she is disabled).

The old 20 year Social Security rule is out. Those interested in

how recent changes in Social Security can affect clients are referred to the U.S. Department of Health, Education, and Welfare, Social Security Administration, HEW Publication No. (SSA) 78-10328, February, 1978.

Hopefully, this modified marriage rule will be as enlightening to the Washington legal community as it was to me.

DUANE E. SCHOFIELD
Spokane

5% of Judges Competent?

Editor:

A senior member of the bar recently wrote to me from Pottsville, New York where he lives in retirement. This is what he wrote:

> Dear George,
>
> Only a few lawyers ever get to be judges. Think about that. The thought struck me the other day as I was pondering young Warren Burger's statement, as recited by one of your local judges, that 95% of the trial counsel are inept.
>
> Adopting the C.J.'s logic, and method (no need to fret over empirical evidence), that means only 5% of the judges are competent, since they are just lawyers themselves.
>
> There being 9 Supreme Court justices, less than 1 is competent.
>
> I guess Warren was speaking on one of his good days.

Best wishes,
Eph.

The author of this letter, my dear old friend Ephraim Tutt, Esquire, member of the bars of Massachusetts and New York, will be 109 years old this July 4th.

GEORGE CLEVE HAYNES
Seattle

Put Bar Dues to Better Use

Editor:

In my opinion, the referendum which rejected the raise in bar dues was a good thing.

There are many lawyers who believe that the bar association does not properly serve the interests of the lawyers of this state. The bar association should serve the members of the bar, act as a public relations agency on behalf of the legal profession, encouraging the public to use the professional skill of attorneys in the conduct of their personal and economic affairs.

Too often we find the Board of Governors arranging meetings in Hawaii and suggesting that non-lawyers be added to our Board of Governors.

The referendum vote demonstrates that the lawyers are not completely satisfied with their bar association.

CHESTER A. LESH
Seattle

Editor's Page

That Damn Examn

The theme of Law Day which starts this month is, "The Law: Your Access to Justice" and, although whoever dreamed up this theme probably had the general public in mind, it equally may be applied to the question of whether the bar exam bars otherwise qualified law school graduates from the practice of law which, if so, presumably has some impact upon the public's access to justice. Most lawyers, having successfully survived this rather boring endurance test, recall it as some damn thing they had to do in order to be permitted to practice. Perhaps the bar exam's validity as a measure of competent legal ability best may be compared to what has been said about democracy as a system of government: imperfect, but better than anything else. Essentially, that is the view expressed by George Neff Stevens in this issue, p. 10.

The subject of the bar exam comes to our attention this month because of a report presented by the Washington Women Lawyers to the Board of Governors at Port Angeles on March 17. The WWL report is highly critical of two bar association committee reports, prepared last summer, known as the Zilly and Grim reports after the respective committee chairpersons. All three reports are related to the question of why a seemingly disproportionate number of minority applicants fail the bar exam. None of these reports answers this question, but the WWL report calls for a study scientifically designed to answer not only this question, but also the underlying question of whether the bar exam is a valid measure of *anyone's* potential ability to practice law competently. A summary of the three reports is included beginning on p. 17.

President Novack has named Board Member Charles W. Cone of Wenatchee to meet with all interested persons and recommend to the Board what, if any, further study of the bar exam should be undertaken.

The Zilly and Grim reports reflect a substantial effort by the respective committees. Although, as pointed out in the WWL report, these reports do not answer the question of why so many minority students fail the bar exam, they do describe the problem and make recommendations which may contribute to a solution. Perhaps the most significant feature of the reports is the conclusion of Dr. James A. Vasquez, a consultant to the Zilly committee, who reviewed ten sample bar exam questions and ten sample law school exam questions selected by the committee:

> The test items reviewed . . . are clearly and unequivocably biased in favor of students from middle class Anglo backgrounds, and to that degree they are biased against those students whose socioeconomic and cultural backgrounds differ from such norms.

The Zilly committee concluded that the "bias described by Dr. Vasquez in effect is a structural bias in the entire educational testing system" and is "not something peculiar to either the law school or the bar examination," and that there is "no short term means of eliminating" this bias. The committee recommended continuation and improvement of the University of Washington law school's special admissions program, but specifically did not address itself to the general question of the constitutionality of such programs in view of *Bakke v. Regents of Univ. of Calif.*, 132 Cal. Rptr. 680, 553 P. 2d 1152 (1976), now before the United States Supreme Court, No. 76-811.

The WWL report urges that further study is necessary to determine, "if the bar exam *is* biased, in what ways can it be changed to make it both fair and adequate as a measure of competence to practice law." Further, the WWL report suggests that a basic study of the validity of the bar exam itself is necessary to determine, among other things, "(1) what skills lawyers should possess, (2) what alternatives exist to measure these, [and] (3) whether the bar [exam] itself does, in fact, measure them in a useful way."

The Board of Governors should create a special task force to examine the bar exam in the manner suggested by the WWL. Such an action is a logical next step following the reports of the Zilly and Grim committees, and it would be invaluable if representatives of those committees would participate in the work of the task force. It is not necessary to wait for *Bakke* before acting because that case presents independent questions. The only problem is money.

JVW

Update on the WSBA Credit Union

I am pleased to be able to report to you that the WSBA Credit Union is now open for business — and doing very well! With Ken Rice of Everett at the helm as President, the Credit Union began operating in late February and attracted deposits of almost $60,000 in the first month, which is remarkable progress for a Credit Union.

A minimum of $25.00 opens an account and entitles the subscriber and his or her family to Credit Union benefits. Membership is available not only to attorneys, but also to their employees. Having once established membership, that membership continues even though the person later leaves the profession, so long as the $25.00 deposit is retained.

The Credit Union is now offering loans for almost any purpose, including automobile loans. It was established primarily as an additional service to meet professional needs of lawyers, which is best illustrated by the determination of its Board of Directors that special consideration should be given in the loan policies for meeting the needs of new lawyers in getting started in their professional career. Although interest rates obviously will vary from time to time, a recent inquiry showed that they were very competitive with other lenders.

The Credit Union's main office is staffed by professional personnel under the guidance of an experienced manager at the following address:

WSBA Credit Union
120 Sixth Avenue North, Suite 303
Seattle, Washington 98109
Telephone: (206) 682-8034

It is, however, in the process of setting up satellite offices for making loan applications, disbursing funds, etc. in Spokane, Tacoma, and perhaps other cities as needed.

You will shortly be receiving by mail additional information on this new service and how to take advantage of it. Additionally, a request will be made for deposits. These deposits are insured up to $40,000 per account, and we believe that they will very shortly be returning dividends at least as attractive as regular savings accounts.

I urge you and your employees to open accounts with the Union, and to consider placing your reserve accounts with the Credit Union. They can be withdrawn when needed without penalty, and will contribute to the success of this program.

For further information, feel free to call the Credit Union Manager, Ray Glynn at the main office.

A Review of Alternatives

Diploma Privilege, Bar Examination or Open Admission

"The charge that written essay type bar examinations are or may be invidiously or inherently discriminatory or culturally biased as to some applicants . . . misses the point."

By **George Neff Stevens**

The evaluation of the legal ability of applicants for admission to the Bar has passed through a number of stages since the United States came into being two hundred years ago. In Colonial days admission to the Bar came by way of appointment by the Royal Governor, or, and more frequently, by proof of membership in one of the Inns of Court of England or by examination by a judge in open court following a long and arduous clerkship. After the Revolution the prevailing practice, instituted by legislative enactment, called for an oral examination of the applicant, usually in open court, conducted by the judge or judges of the court. The rise of Jacksonian democracy led to the abandonment of all educational requirements in a number of States. However, the testing of legal competency by oral examination, usually in open court, conducted by the judge or judges thereof, survived this anti-intellectual onslaught in most jurisdictions. Open admission, without regard to the attainment of minimal educational growth, academic and professional, is not permitted in any jurisdiction today.

As a device to insure the legal ability of the applicant for admission to the Bar, the oral examination was a failure. The complete lack of uniformity as to subjects covered, questions asked, answers found acceptable, was considered by many to be the major defect of this method of evaluating the legal learning of applicants.

Origins of Diploma Privilege

With the appearance of the law schools, the applicant had a choice between preparation by way of a lengthy clerkship or by attending a law school for a much shorter period of time. Regardless of which path was selected, the applicant had to take and pass the oral examination generally required of all applicants at that time. The law schools of this early period, were encountering difficulties with the Bench and Bar because of the difference between the theoretical nature of their training programs and the practical education gained by way of clerkship. The law school people contended that considering the nature of their programs and their regular and systematic examinations, there was no need for an oral examination by or before the judges as a condition of admission.

Although it was no doubt contended that the availability of the diploma privilege to law

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George Neff Stevens is Professor Emeritus, University of Puget Sound School of Law, and has been active in the field of bar admissions. This is a condensed version of an article published in 46 *The Bar Examiner* 15-42 (1977). For a fuller account, supporting authority, tables, and detail, including a state by state study, see the cited text and 46 *The Bar Examiner* 71-102 (1977). The original article contains voluminous footnotes omitted here.

school graduates would improve and raise the educational standards of the Bar by attracting to the law schools applicants who would otherwise enter the Bar by the clerkship route, there is no evidence that the raising of standards was the true objective of this early law school drive for the diploma privilege. Rather, the available information tends to support the conclusion that the diploma privilege was considered by some schools to be an essential economic tool to the survival and growth of legal education in the law schools.

Decline of Diploma Privilege

Adoption of the diploma privilege reached its peak during the decade of 1870-1879. Revocations of the privilege began within 10 years of the first adoption. The number of States granting the diploma privilege in a particular decade topped at 17 during 1880-1889. At that time there were 42 States, plus the District of Columbia, in the Union. Taking into consideration multiple adoptions and revocations in 5 States, there were 38 adoptions and 33 revocations between 1840 and 1976, leaving 5 States with the privilege at present.

Why did the diploma privilege peak in the period 1880-1889 and then enter into a slow but steady decline?

The Reed Report makes it clear that the attack on the diploma privilege was a part of the general attack on the low standards for admission to the Bar prevailing at mid-ninteenth century, and was evidenced by a revival of interest on the part of lawyers in educational standards. Those interested in reform were critical of the great variations in the length of the law schools' academic year. Another source of criticism condemned the diploma privilege because it permitted law school graduates to enter the practice without undergoing any independent educational tests at the hands of State authorities. This position has been and still is a major plank in the American Bar Association's fight for higher standards for admission to the Bar. Yet another attack, leading to the abolition of the privilege, developed out of a fight to require a one year clerkship following graduation from law school in an effort to assure both theoretical and practical competency. Finally, bar examiners, interested in strengthening the Bar by means of a more exacting bar examination, were opposed to the diploma privilege because it permitted graduates of inferior law schools to avoid the higher standards set by the bar examiners.

The available data thus indicates that both the oral bar examination and the diploma privilege ran afoul of the same tide of change which had begun to run in the last quarter of the 19th century in favor of increased and more exacting pre-legal and legal educational requirements and standards for admission to the Bar. The motive appears to have been a sincere desire to protect the public from the harm done by the poorly prepared or incompetent judge and lawyer.

Rise of Bar Exam

The device advocated as the tool to accomplish the Bar's objective was the written bar examination, administered by a central committee of lawyer examiners appointed by the highest court in the State.

During the Gay Nineties the written bar examination became the accepted tool of improvement

and reform. 20 States began requiring written answers to questions designed to test the applicant's legal learning during this period. The first decade of the twentieth century brought 8 more States into the fold. From 1910 through 1919, 5 joined the ranks, the Roaring Twenties added another 5. The 1930's saw 2, with none in the Forties, 3 in the Fifties, and none since.

It should be noted that the written bar examination did not come into use as a means of overcoming dissatisfaction with the diploma privilege. Rather, it was aimed primarily at correcting the abuses and defects of the oral bar examination.

The written bar examination, administered State-wide by a board or commission composed of lawyers appointed, usually, by the highest State court, a practice which finds its origins in New Hampshire, is now universally employed in the United States to test the legal aptitude of the applicant for original admission to the Bar, even in the States granting the diploma privilege to the graduates of their in-State law schools.

Although a decided improvement over oral examinations, the written bar examination has not been accepted as the ultimate solution to the problem of screening applicants for admission to the Bar. The literature of the law, particularly in recent years, has been full of articles pro and con as to the value of the written bar examination.

In a survey conducted by the author, the opinions of state supreme court justices, bar examiners, law school deans and professors, and law students were solicited as to the value of the written bar examination as a device for testing the readiness of applicants for admission to the bar, and as to possible alternatives. The responses are summarized in the full text of this article published in *The Bar Examiner*, including suggestions for improving the bar examination. Based upon these responses, a state-by-state study, and the pros and cons set forth in the available legal literature, the author makes the following suggestions.

Return of Diploma Privilege?

No one suggests a return to wide-open, no standards, admission to the Bar. The dangers to the public are too apparent.

The few suggestions for a required clerkship

following graduation from law school to assure "practical" training, required by a few States, have fallen on deaf ears, for the inherent defects and weaknesses of such programs have made them unacceptable to most lawyers and judges. Experimentation with post-graduate skill training courses have not been too successful. They are helpful in a how-to-do-it way, but not essential to the transition from the classroom to practice. Clinical legal education in the law schools is being pushed; synthetic "practice" and "skills" courses in various kinds and in various areas are being developed, but not as substitutes for the written bar examination.

What of the diploma privilege? Should graduates of "approved" law schools, in-State or out-of-State, be admitted to the Bar without undergoing an independent evaluation, outside the law school, of their legal competency? The pros and cons, the advantages and disadvantages, of the diploma privilege have been set forth above. The constitutionality of granting the privilege to the graduates of in-State law schools while withholding it from graduates of "approved" out-of-State law schools has been established. The decision to extend the privilege to graduates of approved out-of-State schools will, or at least should, turn on a careful consideration of the effect of the grant of the privilege on the standards desired in that jurisdiction for minimum competency to engage in the practice of law.

This history of the diploma privilege reveals that it can be abused, and that graduation from law school alone does not guarantee minimum competency of a sufficiently high level. Accordingly, if the public is to be properly protected from incompetent lawyers and judges, the grant of the privilege, if it is extended, must be accompanied by adequate safeguards. Because the individual applicants are not to be tested, their law schools must be subjected to close scrutiny. Admission under the diploma privilege is based upon the assumption that the graduates of a given law school at a given time are, by virtue of the quality of their education, ready for entry into the practice of law without further testing. The validity of that assumption is essential to the integrity of the diploma privilege program. Accordingly, the assumption must be validated for each group of applicants. It cannot be assumed, nor taken for granted. Nor is reliance on "approval by either or both of the national accrediting agencies either warranted or sufficient. The reinspections conducted by these agencies are few and far between. Their standards and guidelines with respect to educational programs are broad and vague.

The admitting authority in a jurisdiction granting the diploma privilege must know the answers to at least two basic questions: 1) Are the law school graduates getting the kind of legal education the admitting authority feels is essential for entry into the practice of law? and, 2) Is the law school eliminating those who lack the ability, or the interest, to perform at an adequate level? Absent the proper answer to these questions, courageously and conscientiously examined regularly, the diploma privilege could become, as it has been from time to time, a menace to the maintenance of adequate standards for the protection of the public. Additionally, the use of an unsupervised diploma privilege system raises an interesting question as to whether such practice is not an improper delegation to law school faculties of control over admission to the Bar.

Bar Exam Remains "Fairest Tool"

The written bar examination, although the target of attacks from many directions, remains the most effective, and the fairest, tool yet devised for the screening of applicants for admission to the Bar. The essay examination is effective because it requires the candidate to demonstrate the ability to spot legal issues, distinguish relevant from irrelevant facts, analyze the problem, marshall the facts and arguments and come up with a logical, rational answer on a question that may well cross course lines by applying the appropriate rules of law in a way that indicates an understanding of the purposes behind the controlling rules. It is fair because it assures uniformity in the questions asked on a predetermined list of legal subjects and in the quality of acceptable answers by the applicants.

Charges that the bar examination has little or no relationship to the ability of an applicant to practice law make little sense. The ability to spot a legal problem, or the potential for one, hidden in a mass of undigested facts, and to work up an acceptable reasoned solution, is of the very essence of the practice of law.

Charges that the bar examination should be eliminated because it does not test all of the essential characteristics and requirements for the successful practice of law also make no sense. The bar examination does not purport to test all of the essential characteristics of the complete lawyer, nor need it. One does not quit washing one's hands simply because one cannot take a bath before eating a meal.

Charges that the written, essay type, bar examination is prejudicial because the grading involves subjective judgments on the part of the grader overlook one of the basic objectives of the bar examination. The essay examination is the only practical way yet devised by which an examiner can see how the applicant's mind works and this is absolutely essential to a proper determination of the question whether the applicant is ready to start the practice of law. Only through written answers to essay questions can the examiner see whether the applicant saw the pertinent legal issues, understood the relevance of given facts, was aware of the controlling legal principles and of the reasons behind them, and had the ability to put it all together in a logical, reasoned answer.

The evaluation of the answer by the grader must be objective, but it cannot help but be subjective. And so it should be. The grader's reaction to what he has read cannot, and should not, be either avoided or discounted. For the job of a lawyer is to persuade and to convince. What the lawyer says, what he does, how he says it, how he does it, how persuasive his reasoning is on those to whom it is directed are vital to the ability to convince or persuade opponents, judges, juries and even clients. So, testing for this ability makes sense. And, so understood, the subjective reactions of the grader to the answers given are quite pertinent.

The charge that written essay type bar examinations are or may be invidiously or inherently discriminatory or culturally biased as to some applicants also misses the point. The purpose of the bar examination is to find out whether the applicant is ready to serve clients effectively in court and out. If the applicant, after 4 years of work at an accredited college and 3 years in an approved law school, still lacks the ability to understand questions drafted by carefully selected members of the legal profession or the ability to write an answer that makes sense to the examiner, and thus indicates an inability to communicate effectively with lawyer examiners, regardless of the reason why, such an applicant is simply not ready to be certified as capable of handling the legal problems of clients. Prevention of his or her admission to the Bar for such reasons is not invidiously or inherently discriminatory; rather it is effectuating the purpose of the bar examination which is to protect the public from the harm that can be done by the practitioner who for any of many reasons is not yet ready to compete successfully in the legal arena.

It should be noted that lack of adequate communicative skills is not characteristic of any particular group. Unfortunately, it is widespread. The solution to this problem must not be by way of the admission of the unqualified simply because they are disadvantaged, whether it be because of social, economic, linguistic or any other reasons. Nor can an acceptable solution be found by discriminating in favor of members of minority groups, even though that group is presently inadequately represented at the Bar. The price of such a lowering of standards is too high. For the sufferers under such a policy will be the unsuspecting clients who relied on the court's certification of the lawyer's competency. The solution must come by maintaining standards, making educational opportunities available and encouraging and helping those with handicaps to overcome them. We have made progress, but we have a long way to go. This is not not the time to lower standards. Rather, the needs of society demand ever better trained attorneys in order to solve the complex problems of modern "civilized" life.

In conclusion, the history of the diploma privilege and of written bar examinations supports the position of the American Bar Association, a position in which the Association of American Law Schools has acquiesced, that the requisite standards for entry into the practice of law are most likely to be attained and maintained by a system that requires every candidate to be examined by public authority to determine her or his fitness for admission. No alternative to the written bar examination gives this assurance at a price either society or legal education is, or should be, willing to pay.

Why do so many minorities fail?

Women Lawyers Challenge Bar Exam Reports

By **Jay V. White**

PORT ANGELES, March 17-18 — Representatives of the Washington Women Lawyers met with the Board of Governors here to present a 22-page report by that organization which is highly critical of two bar association committee reports commissioned by the Board last summer "to study, identify causes and recommend solutions for the high bar exam failure rate by minority students . . . ." (The President's Corner, *Bar News*, 31:8:9; see *Bar News*, 31:9:31)

The Board voted 6-2 (Peterson absent; Hemovich and Walker opposed) to authorize the President to appoint one or two persons as a task force to determine whether further study of the bar examination should be undertaken in view of the WWL report. *For editorial comment, see Editor's Page.* President Novack designated Board Member Charles W. Cone of Wenatchee to chair this exploratory process, and Novack may appoint a second person to participate.

The two bar reports were the products of committees chaired by G. Keith Grim and Thomas S. Zilly respectively. The Grim Report addressed proposals to change procedures involved in the administration of the bar exam; the Zilly Report studied the Special Admissions Program at the University of Washington School of Law and made recommendations designed to improve the bar exam performance of minority applicants to the bar. *Details to follow.*

Anne Ellington, chairperson of the committee which wrote the WWL report, together with WWL President Jane Noland, charged that the Grim and Zilly reports "do not provide the Board or the bar association with the answer to the question raised: why do a disproportionate number of minority applicants fail to pass the Washington bar examination?"

Similar concerns as to the adequacy of the Grim and Zilly reports also have been expressed by the Loren Miller Law Club; the Coalition for Justice in the Legal System; the Minority Legal Institute; the Asian Law Association; and the Young Lawyers Section of the Seattle-King County Bar Association.

On February 21, WWL submitted advance copies of its report and in an accompanying letter requested the Board to convene a committee including representatives of interested groups "which will, *with professional (expert) assistance,* design and conduct a study (1) of the validity of the present bar examination as a measure of competence to practice law, and (2) of the content and format of the examination in the context of fairness to minority applicants...." (Emphasis in original.) The letter also listed recommended procedural changes in the administration of the bar exam which WWL requests be implemented in the interim pending further study.

See Box, p. 24. WWL's formal recommendation and its underlying rationale were set forth in a document distributed to Board members by Ellington and Noland during their appearance here on March 17. See Box, p. 24.

Dolores Sibonga of the Asian Law Association also appeared March 17 to convey her organization's endorsement of WWL's recommendation. She added: "We ask the bar to support minority law students while they are in law school, through tutors and clinical programs."

In this regard, Barbara Standal of Spokane addressed the Board to describe a special program which has been conducted at the Gonzaga University School of Law under her leadership. The program consists of a three-week course in which minority students are introduced to basic legal courses, legal analysis, research, writing, and oral argument skills in a noncompetitive atmosphere. The Board agreed to monitor the program and directed President Novack to write to the Dean at Gonzaga urging its continuation, and to write to the law school deans at the University of Puget Sound and the University of Washington suggesting consideration of the implementation of similar programs at those schools.

Lish Whitson, meeting with the Board as representative of the Seattle-King County Bar Association, Young Lawyers Section, reported that Section's endorsement of WWL's recommendation that further study be undertaken to identify the reasons why so many minority applicants fail the bar examination.

Background: The Grim Report

The following is a summary of the content of the Grim Report. As an aid to understanding the content of the WWL critique of that report, summaries of the WWL position on a given point are inserted at appropriate points. The Grim Report (sometimes referred to as the "Grim-Blom Report") consists of a 10-page memorandum dated July 19, 1977 prepared by G. Keith Grim, and the three members of his committee, Daniel C. Blom, James M. Hilton and James H. Madison. The WWL critique is a 6-page document prepared by Anne L. Ellington, chairperson of the WWL Bar Examination Committee, and the six members of her committee, Barbara Frost, Dolores Sibonga, Susan Watkins, Susan Samp-

son, Mary Van Gemert, and Cynthia Whitaker. — Ed.

Need for Bar Exam

Grim Report: Referring to a study by the Association of American Law Schools, the committee states: "We believe it is essential to the protection of the public's interest in receiving competent legal advice and representation that law graduates be examined to demonstrate their legal knowledge before they are permitted to practice. We believe no one would seriously dispute this requirement who has had the opportunity to read a representative sampling of failing answers to bar examination questions written by law school graduates.

"However, the inability of many failing applicants to identify legal issues, analyze reasonably simple factual situations, and apply to them controlling legal principles is not a phenomenon associated exclusively with the recent increase in numbers of minorities who have graduated from law schools. The pass-fail results of examinations during the past 10 years reveal that a fairly consistent percentage of applicants have failed bar examinations throughout that period."

WWL: The committee's reasons for continuation of the examination "depend upon a single assumption: that the bar exam in its present form is a valid measure of competence to practice law. The only evidence cited in support of the conclusions reached is not evidence at all, because it is secret: a 'representative sampling of failing answers' is not in fact available to anyone other than bar examiners — who have a vested interest in sustaining the validity of their own system. The exam answers — whether failing or otherwise — are not available to anyone who might wish to examine the relationship, if any, between the exam and the competency to practice law. We must, it would seem, take the committee's word for it: the exam is needed because there are people who fail it."

Passing Grade: 126

Grim Report: The Loren Miller Law Club recommended that the passing grade be reduced from 126 to 124. The committee states:

"In our opinion there does not appear to be any sound basis for reducing the passing grade below a level which the examiners felt is the minimum required to demonstrate sufficient legal knowledge to be admitted to the practice of law... [E]ach examination question has been prepared by separate examiners. Each grades the answers to his question independently of the others and no examiner has any knowledge of how grading is proceeding of other questions, either separately or collectively. . . ." [*The Zilly Report, based upon a review of the results of the July, 1976 exam, stated its belief that a reduction in the passing score to 120 "would not significantly affect the passing rate of specially admitted students." – Ed.*]

WWL: "The committee asserts that the grading process is fair because the examiners grade independently. We disagree. Fairness is a function of standards, not independence; the examiners apply apparently only one 'standard': a grade of 7 denotes the examiner's personal view of what constitutes a minimally sufficient answer."

Model Answers

Grim Report: "[M]odel answers prepared by examiners are now available for review by failing applicants."

WWL: "However, these answers are provided by the examiners themselves, and in fact may vary from a one-page outline to a ten page, single-spaced brief complete with citations and case analysis. Such lengthy and detailed memoranda are not models of answers an applicant could prepare in the 40 minute time period permitted during an exam . . . ."

Appeal Process

Grim Report: "It has been suggested that failing applicants be allowed to copy relevant portions of their examination booklets and be allowed to make written or oral presentations with counsel of their choice before an appropriate appeal committee. . . .

"... Permitting failing answers to be copied and taken from the Bar Association office would most likely lead failing applicants to attempt to demonstrate an inconsistency in grading from examiner to examiner or from examination to examination. Grading of essay answers is neces-

sarily subjective, and there can be no absolute standardization of grading techniques . . .

"Permitting failing applicants to orally appeal their grades and be represented by counsel would require, to be completely fair, a full review and re-grading of every question answered together with a hearing on his oral appeal and the argument of his counsel . . . The time involved and the costs for such a procedure would be prohibitive. Moreover, the anonymity of the applicant would be lost by personal appearance . . .

"This committee believes that the present procedure is adequate. To recapitulate, there is first the initial grading done by the examiners. Applicants whose grades are close to passing are reviewed again by all the examiners at the borderline review meeting, and after that procedure has taken place, applicants who are reasonably close to the passing mark are accorded the further opportunity of having a limited number of their failing answers reviewed."

WWL: Regarding the Grim Report position on permitting failing applicants to copy their answers, "[a]t least three things can be said about this rationale: (1) there is nothing which now prevents the applicant from making such an argument; (2) the examiners can by rule exclude such arguments from review if they so wish; (3) such arguments are likely to have the merit of revealing problems of language, structure, or content of the examination . . . Essentially, the committee's argument is reduced to one of administrative inconvenience — a Pandora's box sort of response: access may result in challenge . . ."

Regarding oral appeals and representation by counsel: "Time and cost would certainly result, although the committee offers only its own conclusion that they would be 'prohibitive.' Anonymity, however, need not be lost; procedures could surely be devised whereby the reviewers need not face the applicant or the applicant may agree to sacrifice the anonymity. . . ."

Segmented Exam

Grim Report: The Coalition for Justice in the Legal System proposed that failing applicants be re-examined only on subjects they did not pass on the previous examination. The committee responded, in part:

"One of the important objectives of the bar

examination is to require applicants for the first time to review as a whole the entire body of law they have studied during law school. The fact that the bar exam is a stressful experience is not inappropriate or immaterial to testing the capability of the applicant to function in the practice of law advising clients . . .

"Further, seldom are the questions or problems presented in the practice by clients who need legal representation easily isolated or identified as pertaining to particular law subjects. The bar examination confronts the applicant with the requirement for the demonstration of ability to effectively analyze problems in terms of what may be one or more pertinent areas of law involved. We believe that the present practice of frequently covering more than one area of law in a single question is the preferable testing approach. We do not, consequently, presently believe that a system should be adopted of testing failing applicants only on the subjects they have previously failed or presenting the examination in segments according to general areas of law subjects."

WWL: "The Zilly Report contains data compiled for the Committee by Dr. Wallace Loh [Ph.D (Social Psychology); J.D., Assistant Professor, University of Washington School of Law.] which compares law school course grades to performance on bar exam questions in the same subjects. According to Dr. Loh, the Bar Association helped to identify the topic covered by each question . . . It would seem, therefore, that categorization is indeed possible, and that the exam can in fact be given in sections. (The Florida bar exam is presently so administered.)

"The committee further asserts, however, that the 'stressful experience' of the bar exam is appropriate to testing capability to practice law because the ability to perform under extreme pressure is required in practice. Again the committee asserts its belief without supporting evidence; it is at least as valid to assert that many engaged in successful practice of law almost never experience a situation of such sustained stress. In fact, the committee's assertions are again at odds with the Zilly Report, which recommended that the time period for answering each question be lengthened . . . It is hard indeed to understand why the Grim Committee insists that speed is the equivalent of quality; what an applicant actually knows seems far more important than how fast he or she can write it down."

Subject Matter

Grim Report: "A suggestion has been made that the examination reflect issues more factually relevant for minority and low income communities. Among the type of subjects mentioned were consumer protection, environmental law, criminal law, and landlord and tenant law.

"Criminal law has comprised and continues to comprise a significant portion of the examination . . . Landlord-tenant law has in the past been included within the general subject of property law.

"While consumer protection and environmental law issues have been incorporated in recent essay examination questions, the substantive law in these fields is largely statutory. Because of the large number of out-of-state applicants who take the Washington bar exam and partly because statutory law is generally believed by examiners to be inappropriate as a source of examination questions, examiners avoid questions which require specific knowledge of Washington statutes.

"It is our recommendation, however, that emphasis on these subjects in future examinations increase to the extent these areas can appropriately be incorporated into the essay format of examination."

WWL: Regarding the committee's view that statutory law is an inappropriate source for bar examination questions; "We have three observations on this statement: (1) Applicants taking the bar exam for the first time do not generally have the impression that Washington statutes will not be covered by the exam; (2) What is the justification for separate exams in each state if not to require applicants and attorneys to evidence a knowledge of laws of a particular state?; (3) The Vasquez Report [James A. Vasquez, Ph.D. (Psycholinguistics), Director, Center for Chicano Studies], attached to the Zilly Report as Exhibit 2, indicates that minority applicants might do better if exam questions were based around quoted statutes.

"Vasquez discovered that virtually all the bar

exam essay questions are inductive in format. Vasquez suggests that an approach which would result in better scores for minority students would be to provide general rules or principles to be used and require the student to deduce particulars and apply the principles. Such an approach might well include questions which quote statutes and require application to particular situations.''

Validation

Grim Report: The Coalition for Justice in the Legal System recommended that bar examination scores should reflect a score derived from the results of a professionally validated examination. The committee responded:

''We are not entirely sure what is meant by 'professional validation of the examination.' . . .

''[The] range of subjects [tested], it seems to us, covers the principal areas of law in which lawyers practice and as to which the public expects lawyers to possess requisite legal knowledge. The subject of the exam thus appears to validly test whether the applicants have the requisite knowledge to be licensed to hold themselves out to the public as practicing lawyers.

''To the extent the recommendation suggests that the procedures for scoring test results should be validated, we believe it would be of assistance to the Board of Examiners to have the advice of professionally skilled grading experts who could advise as to whether, in certain instances, all the grades on a particular question should be disregarded in determining the overall results of the examination.''

WWL: ''The response of the Grim Committee . . . is simply patronizing: 'We are not entirely sure what is meant by ''professional validation of the examination.'' ' The obligation of the committee was to resolve such uncertainty by investigation. Instead the committee offers its belief ('it seems to us') that the exam validly tests whether applicants possess 'the requisite legal knowledge' to be licensed as attorneys. Unfortunately, that is precisely the question: do the exam questions indeed test for and reveal whether an applicant has the knowledge and skills necessary to practice law. Validation is not a new legal concept; it is somewhat puzzling that a committee of lawyers would assume that belief (even theirs) is an adequate substitute for actual professional

evaluation of the exam. The committee does recognize that perhaps *scoring* problems might exist and might be alleviated by professional assistance; why does the committee not also consider the possibility that problems exist in the very design of the examination?''

Background: The Zilly Report

Similar to the preceding summary of the Grim Report, the following is a summary of the Zilly Report contrasted with the critique thereof offered by the Washington Women Lawyers. The Zilly Report totals well over 100 pages, with 60 pages being the Committee's report and the balance comprising of five exhibits including a summary of results of a law student questionnaire; the report of Dr. James Vasquez; and three reports by Dr. Wallace D. Loh. The Zilly Report, dated August 1, 1977, was prepared by Thomas S. Zilly, chairman of the Washington State Bar Committee on Third World Students, Law Schools and Bar Exams, and the seven members of that committee, Marianne K. Holifield, Bruce M. Pym, Kenneth B. Rice, Luvern V. Rieke, Charles Z. Smith, Juan M. Soliz and Andrew J. Young. The WWL critique consists of 11 pages prepared by those identified in the note preceding the summary of the Grim Report. — Ed.]

Purpose of Report

Zilly Report: ''This Committee was formed to study the reasons Minority students have recently experienced difficulty in passing the Washington State Bar Examination. The Committee has studied the Special Admissions Program at the [University of Washington] Law School and reviewed the progress of specially admitted students during law school and their achievements on the bar examination.

''The Committee has not addressed itself to the question of the constitutionality of special admissions programs. See *Bakke v. Regents of the Univ. of Calif.*, 132 Cal.Rptr. 680, 553 P. 2d 1152 (1976), on appeal to the United States Supreme Court, No. 76-811.''

The committee also stated:

''For purposes of this Report, the term 'Minority' is defined as persons of ethnic backgrounds, including, without limitation, Black, Chicano, Latino, Native Americans, Asians and all other colored minorities. The term 'Law School'...designates the University of Washington unless otherwise indicated.''

WWL: ''While the committee indeed reviewed the University of Washington program, and confirmed that minority students are often failing the bar, the report does very little to answer the central question: *Why*?''

The Loh Data

Zilly Report: ''...Dr. Loh studied the relationship between the LSAT score, academic grades and enrollment in law and non-law courses for selected samples of Law School graduates from 1974 to 1976. The first and principal sample included all students graduating in these three years who met any one of the following non-mutually exclusive criteria: (1) special admission to the Law School; (2) first year Law School average of 74 or less; (3) overall Law School average under 74 at graduation; or (4) failed the Washington Bar Examination on the first attempt. In effect, the sample thus composed represents approximately the lower 20th percentile of each of the three classes . . . For purposes of analysis . . . the final composition of the 20th percentile consists of 121 individuals who graduated over a three year period of time.

''A second and comparison sample was drawn at random from the upper 80th percentile...of the three graduating classes. This sample consists of 30 students; all were Caucasian and all graduated.''

WWL: ''Much of the Zilly Report's discussion and conclusions are based upon data compiled for the committee by Dr. Wallace Loh, Assistant Professor at the University of Washington Law School . . . However, Dr. Loh himself was not convinced he was studying the right things, and he specifically said so:

> No representation is made that the factors selected for study are the main determinants of bar examination performance. Indeed, other factors — individual commitment and motivation; part-time employment during law school years; participation in tutorial programs; reliability and validity of the bar examination itself; the pass-fail line set by the bar examiners — arguably are as impor-

WWL's BAR EXAM RECOMMENDATIONS

"Based upon . . . our review of the Grim and Zilly reports, and upon our deep concern over the minority pass rate, Washington Women Lawyers requests the Board of Governors:

1) To express its concern for the racial and ethnic imbalance in the membership of the Washington State Bar Association; and
2) To convene a committee to further address the question of why so few minority applicants pass the state's bar examination. "We recommend that this committee:
   a) Include members of Washington Women Lawyers, the Loren Miller Law Club, the Asian Law Association, the Minority Legal Institute, the Coalition for Justice in the Legal System, Seattle-King County Young Lawyers Board of Trustees and a Member of the Board of Governors.
   b) Have authority to seek outside funds to conduct the study;
   c) Have the authority to hire outside experts when necessary; and
   d) Be granted access to exam questions and answers with appropriate safeguards to protect confidentiality.

We further recommend that the [following] procedural changes . . . be accepted as a step towards procedural reform without a reduction in quality of performance . . .

A. Only one question should be graded by each examiner; that question should not be written by its grader.
B. Standards should be drafted and implemented for the design of each question, incorporating the suggestions of the Zilly committee (more personal law emphasis, use of deductive reasoning format in some questions.)
C. Standards should be drafted and implemented for the grading of each question, including some pre-determination of the weight to be assigned to each issue. Standards for grading and content of questions should be public.
D. Model answers should be drafted, perhaps in outline form, which assign point values to various issues and make clear that individual responses need not discuss every issue in the model in order to be adequate. Model answers should not be miniature briefs.
E. More time should be allowed for each answer, to substantially reduce pressure during the exam.
F. Applicants who fail the exam should be permitted to examine a range of answers graded 7 and 10 for each question, for comparison purposes. They should be permitted to copy such examples, the model answer, the question, and their own answer.
G. The present limitation on appealable scores (within eight points of passing) and appealable questions (10) should be lifted.
H. The ethics exam score should not be removed from the total before the final score is determined. It is possible to require that the ethics section be passed separately, without eliminating that score from the overall average.
I. The Board of Governors should explore the feasibility of a segmented examination such that only a part not passed need be repeated."

tant, or more so, than the ones investigated in this study.

Exhibit 3, p. 1.

"Nowhere does the Zilly Committee acknowledge that these further studies need be undertaken. Instead, the committee treats Dr. Loh's data as fulfilling all the requirements of a full and complete study of the phenomenon of minority applicants' bar failure.

"Unfortunately, Dr. Loh's reports fail to provide us with any answers to the question, in part because of his research design. To study this problem, Dr. Loh divides the University of Washington law school graduates into two groups..."

After pointing out that the lower 20th percentile group included all those who failed the bar, regardless of academic standing, the WWL report continues: "Now the problem which arises is obvious. The question is why *minority* students fail the bar. If everybody who fails is compared to a bunch of people who passed, the results are not only predictable, they are essentially useless. What needed to be done, with essentially the same data, was to compare whites and, say, blacks within the 'lower 20% group,' or to compare background data for all those who fail; or to try to discover why 31% of the special admittees do pass, when all are predicted to fail; or to try to determine why minority students with LSAT's below 500 tend to fail the bar, when whites with the same LSAT's but admitted 10 years ago passed."

Zilly Report: "In his first report to this committee, Dr. Loh concluded that the following three factors statistically correlate most closely with bar exam success: (1) LSAT score, (2) predicted law school grade average, and (3) law school first year grade average... These results are highly significant. A very large percentage of persons with LSAT scores of 499 or below (25 out of 30) have failed the bar examination. Every person in the 80th percentile study group passed the bar. Their LSAT scores ranged from 570 to 770, thereby placing them in the top two levels of the LSAT distribution...

"Success on the bar examination is also significantly associated with a student's predicted law school grade averages (which is a composite of LSAT score and undergraduate grade average)... Students who are admitted with a predicted law school average of 72.5 or higher have a bar success rate of about 79 percent; those with a score of 72.4 or less show a success rate of 24.5 percent. These results... show unequivocably that pre-law academic characteristics (LSAT score and predicted law average) are strongly related to bar examination success."

WWL: "This is a very large disparity compared to the small difference in predicted first year averages; yet neither Dr. Loh nor the committee offers an explanation other than to comment that LSAT scores and predicted first year averages are 'strongly related to bar examination success.' "

Zilly Report: Following a ten-page review of the Special Admissions Program at the University of Washington Law School, and related programs there and elsewhere, the Zilly Committee devotes an additional ten pages to law school and bar exam performance of minority students. Regarding bar exam performance, the committee states, in part:

"Graduates in the lower 20th percentile have tended to score higher in the personal law areas (criminal law, torts, family law)... of the bar examination than in other areas...."

WWL: "The committee, however, makes no examination of the reasons for this discovery, in spite of Loh's specific recommendation that the pattern merits further inquiry."

Zilly Report: "The pass rate on the bar examination (first attempt) for the 20th percentile sample was 64 percent. The rate for the subgroup of special admittees was 31 percent. By comparison, the pass/fail rate for all persons during the same period as those included in the sample was approximately 75 percent. The following table presents the results by ethnic group. Except for two Asians, all Minority students in the 20th percentile sample represented in the following table were specially admitted:

WWL: "A more telling example of the absence of direction on the part of Dr. Loh and the committee is found in Table 9... For the 20th percentile sample, the bar pass rate for whites was 82%, while the pass rate for blacks was 21%. Neither Dr. Loh nor the committee offers any comment on this statistic — yet this seems to

[Zilly Report Table 9]
Bar Examination Results By Ethnic Background
In the 20th Percentile Sample
[Pass-Fail in % and (Numbers)]

	Pass Bar		Fail Bar	
White	82%	(62)	18%	(14)
Asian	60	(6)	40	(4)
Black	21	(5)	79	(19)
Native Amer.	38	(3)	62	(5)
Chicano	33	(1)	67	(2)

be the precise sort of discovery which would lead to further inquiry if there were some genuine commitment to discovering why non-white applicants do not pass the bar exam. If white students with low law school grades pass the bar at a rate actually in excess of the overall pass rate for all applicants (82% compared to 75%...), why do blacks with similar law school grades do so poorly? Is it perhaps a function of the examination? Of some factor in the law school? The Zilly Committee does not inquire."

The Bar Exam

Zilly Report: "The obvious purpose of the bar examination is to determine whether an applicant should be admitted to the practice of law by testing (1) the applicant's ability to analyze legal problems, (2) the applicant's knowledge of the law and (3) the applicant's ability to apply his or her legal knowledge in providing a rational and well-reasoned response."

WWL: "Dr. Loh inferred from his studies involving the bar exam that the exam tests not abilities and knowledge unique to law, but instead tests basic cognitive skills... Dr. Vasquez concluded much the same thing in his report to the committee, and stated that bias against non-Caucasians results from the test to the extent it is a cognitive skills test and not a legal skills test... That the bar exam is a valid predictor of ability to perform successfully as a lawyer [is an] issue [which] is *never* addressed by the Zilly Committee, save in its quotation of passages from one . . . article." [*The Zilly Report quoted with approval from Stevens, "Diploma Privilege, Bar Examination or Open Admission," 46* **The Bar Examiner** *15, 34, 36 (1977), and expressly*

adopted that writer's conclusion that "diploma privilege" is not an acceptable alternative to the bar examination. A condensed version of that article appears elsewhere in this issue of the **Bar News.** *– Ed.*]

Zilly Report: "The [bar exam] essay questions... favor applicants who approach problem solving situations from a field independent mode of cognitive style... This approach (inductive reasoning) stresses information processing of small details first, moving from the particular to the general in the overall process. Dr. Vasquez, in his report, states in part at page 2:

> Studies have shown that individuals from different ethnic groups vary considerably in the relative strength they possess with regard to certain intellectual skills... and that some minority groups clearly perform better when a deductive approach to information processing is used... These researchers state that the inductive approach facilitates learning among Anglo students.

"The committee believes that bar examination questions must necessarily require an applicant to analyze independent facts (using inductive reasoning) and to apply the applicant's substantive knowledge to answer the questions. However, the committee believes bar examiners should attempt, whenever possible, to include a deductive approach so as to be as fair as possible to all applicants."

WWL: "Dr. James Vasquez, Director of Chicano Studies at the University of Washington, examined the sample questions from University of Washington law school exams and the bar examination selected for him by the committee . . .

"Dr. Vasquez, like Dr. Loh, did not study the validity of the bar exam as a predictor of success in practicing law; like Dr. Loh, he recommended that such a study be done... Dr. Vasquez did study the degree to which law school test items and bar exam questions may be biased against or more favor students by reason of ethnic or class distinctions. His findings, if accepted, would call for substantial changes in the content and procedure of the bar examination.

"The Zilly Committee appears to accept the validity of Dr. Vasquez's findings for the most part... That is, the committee nowhere attacks his methodology or refutes his conclusions squarely. However, the committee does gloss over much of what Dr. Vasquez says, without citing much authority for its position.

"First... the committee sidesteps Dr. Vasquez's suggestions that questions utilizing deductive analysis be included in the bar exam, stating merely that it 'believes' bar questions 'must necessarily' use inductive reasoning. No reasons are given to support this belief, nor are *any* studies cited. Since the validity of the bar exam itself as a predictor of 'success' at lawyering has never been established, despite the recommendations of both Dr. Loh and Dr. Vasquez, this 'belief' amounts to no more than an expression of the committee's assumption of the validity of the examination in its present form."

Zilly Report: "The committee notes that Dr. Vasquez concludes at page 4 of his report, as a result of reviewing ten sample bar questions and ten sample law school questions, that in his judgment:

> The test items reviewed... are clearly and unequivocably biased in favor of students from middle class Anglo backgrounds, and

to that degree they are biased against those students whose socioeconomic and cultural backgrounds differ from such norms.

Some comment on this conclusion seems appropriate.

"The bias described by Dr. Vasquez in effect is a structural bias inherent in the entire educational testing system. It is not something peculiar to either the law school or the bar examination. Whatever difficulties are fostered for students by this bias exist prior to the commencement of law study...

"The committee believes that there are no short term means of eliminating the systematic structural bias in the educational system which probably creates many of the differences in respective skills and knowledge just described. However, if the Special Admissions Program is to be continued, as the committee strongly believes it should be, then efforts must be continued to try to improve the skills and knowledge of those specially admitted students needing such additional assistance, and thereby reduce or neutralize any adverse effect from this bias."

WWL: "In the committee's view, then, the bar exam however racially biased, need not be changed in any way because it is only one of many biased tests.

"This reasoning is most confusing. To excuse one wrong on the basis of other wrongs is nonsensical. Indeed, this portion of the report should have received the most serious attention from the committee: if the exam *is* biased, in what ways can it be changed to make it both fair and adequate as a measure of competence to practice law? The committee does not inquire; instead, the committee is satisfied to know that the exam is designed to measure achievement in one academic approach, and that other similar measurements have been applied to bar applicants throughout their education. Bias in those earlier tests excuses, in the committee's eyes, any bias in the bar exam."

Conclusions and Recommendations

Zilly Report: The final ten pages of the committee report are devoted to a statement of "conclusions and recommendations." The "conclusions" indicate that there is "a racial and ethnic imbalance in the practice of law," and generally describe the University of Washington law school's experience with its Special Admissions Program. The committee prefaces its "recommendations" with the statement that the Special Admissions Program "has demonstrated value and should be continued" but that the program "will be more productive" if the committee's fourteen recommendations are carried out. Most of the recommendations relate to improvement of pre-law school preparation and recruitment; the admissions process; and post-admission support (including improved tutorial programs and financial aid) for minority students. The committee recommends that public and private law firms and legal agencies should be encouraged to employ minority students and that the possibility of a four-year program for specially admitted students should be explored by the law school. The committee's last four recommendations relate most directly to the bar exam:

"11. The bar examination does provide a comprehensive examination of the entire field of law study. However, the committee believes that the bar examination, as presently structured, should be modified so as to provide more emphasis on personal law subjects (torts, criminal law, constitutional law, creditor-debtor relations and family law); provide more time for answering questions; and involve a deductive approach whenever possible. The Washington State Bar Association should continue to involve Minority bar examiners. It also should publish recent bar examination questions and model answers. [*The Board of Governors subsequently has authorized publication of prior bar exam questions, but not model answers thereto. – Ed.*]

"12. All Law School faculty and bar examiners should receive special sensitivity training to attempt to eliminate any unconscious discrimination in teaching and in the preparing, writing and/or grading of essay questions.

"13. The committee believes that the passing score for the bar examination should continue to be 126. The reduction of that passing score to some lesser score would not materially aid in the passing of additional Minority applicants.

"14. Finally, The Washington State Bar Association should itself make a substantial and continuing money commitment to fund the recommendations contained in this Report. It should

also assist Law School efforts to obtain other funds for student assistance.''

WWL: ''The Zilly Committee offers a number of 'conclusions' which do not flow from the evidence and data discussed in the body of the report and which appear to represent merely the collective opinions of the Committee members . . .

''. . . The changes suggested in the University's program, however meritorious, are more an indictment of the law school than an answer to the problem.

''In its recommendations, the committee finally states, without authority or analysis, its own underlying assumption: 'The Bar Examination does provide a comprehensive examination of the entire field of law study.' . . . From this it is clear to what extent the committee missed the point: 'Law study' is not *necessarily* synonymous with law practice. The Zilly Committee's assumption that it is, and that the bar exam adequately tests, is insufficient. The committee has assumed that which it should have investigated.

''In sum, the Zilly Committee has undertaken a study of reasons for failing the exam without ever questioning the validity of the exam itself. For example, the committee does not ask (1) what skills lawyers should possess, (2) what alternatives exist to measure these, (3) whether the bar itself does, in fact, measure them in a useful way. Instead, the committee 'believes' that the bar tests certain qualities and, apparently, assumes that these qualities and these alone are essential for successful lawyering.

. . .

''And, finally, the Zilly Committee's report fails because it is based on an objectively false assumption. Even given that the bar questions are credible predictors, and given that the University of Washington is a competent law school, the validity of the bar exam turns upon the validity of the grading scale utilized. And, at this point in time, there is *no* grading scale, beyond the mere recitation that 'seven is passing.'

''. . . All of these students [in the Zilly study] graduated from the same law school; the committee believes that law school exams and the bar exam test the same skills. Why, then, do minority students who pass law school exams *fail* the bar, while white students who pass law school exams *pass* the bar?'' □

The Board's Work

Board Reports Now More Timely

At the request of the Board of Governors and with the approval of the Editorial Advisory Board, the editor has arranged the publication schedule for the *Bar News* in a way which generally will permit "The Board's Work" reports to be published in the issue next following the Board's meeting, usually within ten days. In the past, these reports have appeared 30 to 40 days after the fact and usually after an intervening Board meeting. This issue marks the changeover to the new schedule; accordingly, the report on the Board's April meeting is included together with the previously scheduled report on the March meeting.

Lawyer Referral Service in Jeopardy Again

LA CONNER, April 14 — The Board of Governors has deferred until its May 19-20 meeting what apparently will be the final decision as to the fate of the Lawyer Referral Service during the current fiscal year.

In December, following the membership's overwhelming vote to cancel the previously announced dues increase, the Board narrowly voted to eliminate funding for the LRS which incurred a $24,405 operating deficit in fiscal 1977. *(Bar News,* 32:2:25) In January, the Board unanimously (with one abstention) approved continuation of the program for 60 days provided that it thereafter became self-sustaining under a program developed by Lawyer Referral Committee Chairman M. Wayne Blair. *(Bar News,* 32:3:21) Under Blair's plan, the fee for a one-half hour consultation was raised from $10 to $15 which, in turn, would be remitted by the participating lawyer to the bar association to cover administrative costs. Formerly, LRS panel lawyers could retain this fee.

The program was up for review this month, but at Blair's request the matter was put over until May to permit consideration by the Lawyer Referral Committee and to gain another month's experience with the amount of revenue which the program is producing under the "self-sustaining" plan.

Preliminary indications, however, are that the Board will be asked to approve some degree of continued bar association subsidy of the program, and the Board appears closely divided on the question of whether the membership desires the program to continue.

In January, there were 308 attorneys on the LRS panel; this number dropped to 196 following the changeover under the "self-sustaining plan," effective March 1. In March, there were 163 referrals but only 42 of these resulted in payment of the $15 initial consultation fee to the bar association. Many of those referred either fail to keep their appointment or are not prepared to pay the referral fee immediately. Revenue from such fees to date (including 8 in February, 42 in March and 7 in the first part of April) totals only $825.

LRS serves all areas of the state except Spokane, Pierce and King counties, which have local programs, and operates through a toll free telephone number requiring the full-time services of a bar association staff person.

OTHER BOARD ACTIONS...

[The following Board actions are briefly noted. Included are some matters on the agenda at the meeting in Port Angeles, March 17-18, featured elsewhere in this issue. Dates in parentheses indicate whether the item was acted upon in Port Angeles or during this meeting in La Conner. -Ed.]

■ **POSSIBLE 1979 DUES INCREASE — Board Member Michael J. Hemovich, chairman of the Board's Budget Committee, presented that committee's interim report. He stated that the committee probably will recommend an increase in 1979 dues from the present $100 to $130 for those admitted over two years, with no increase in the $75 payable by persons admitted less than two years. The committee also is determining whether a balanced 1979 budget will be possible without any dues increase, and likewise is considering the feasibility or necessity of a budget based upon a dues increase to a figure greater than or less than $130 and/or a dues increase for those admitted less than two years. (4/14)**

■ **JUDICIAL DISCIPLINE — The Board discussed the possibility of establishing in this state a commission or panel to implement standards for judicial discipline and removal, with ultimate authority vested in the state Supreme Court. Washington is one of only two or three jurisdictions which lack such a program, and a constitutional amendment would be necessary to put one into operation. (3/17;4/14)**

■ **UNFAIR CRITICISM OF JUDGES — The Board considered ways in which the bar association through its President could respond to or correct unfair or inaccurate criticism of judges by the news media under guidelines similar to those established by the Seattle-King County Bar Association. (4/14)**

■ **INADEQUATE FEES FOR COUNSEL FOR INDIGENTS— Board Members Lowell K. Halverson and David A. Welts reported upon the inadequate amount of public funding available to compensate attorneys who are appointed to represent indigents in criminal appeals. It has been projected that more than 950 such appeals will be filed during the current biennium, and private counsel frequently are compensated at a rate below overhead cost and below fees paid to public defender associations. The Board unanimously authorized the President to refer the matter to a new or existing committee to determine whether a legislative solution could be developed, or whether litigation will be necessary, or both. (3/17)**

■ **GOVERNMENTAL LAWYERS' PROPOSALS — Marianne McGettigan and Wayne Wiiiiams, representing the Governmental Lawyers Association, met with the Board to propose the following (to quote a letter from McGettigan which accompanied their presentation:) "...as ideas which might serve to allow greater member participation in the activities of the bar association": (1) Individual Board members should send quarterly reports to their constituents, as has been the practice of some of them, in order to permit more timely communication than may be possible in the *Bar News;* (2) Interested individuals or groups should be supplied copies of all or portions of the Board's agenda relating to areas where particular interest has been expressed; (3) The proposed budget should be circulated to local bar association presidents, and preferably to interested individuals, with detailed information supplied on request, followed by open hearings on the budget in various parts of the state; and (4) Board members should encourage individual members of the bar to attend Board meetings, with meetings at least once a year in each district. The Board agreed to consider these suggestions; requested the *Bar News* editor to determine whether reports on the Board's meetings could be published in a more timely fashion than previously has been the case (See Box, p. 30); and directed the Budget Committee to recommend a procedure for giving interested members an opportunity to be heard on budget questions prior to presentation of the budget to the Board. (3/17)**

■ **BAR ADMISSION CITIZENSHIP REQUIREMENT — Following an appearance by John Strait, attorney of record in a matter pending in the state Supreme Court which involves a challenge to the requirement in APR 2(b)(2) that an applicant to the bar must either be a citizen of the United States, or one who has declared his intention to become one and is proceeding with due**

diligence to accomplish that purpose, the Board reaffirmed its action in February *(Bar News* 32:4:22) to oppose any change in that rule during the pending litigation (6-3, Fletcher, Halverson and Welts opposed). (3/17)

■ IMPROVING LAWYER COMPETENCY — The Board engaged in preliminary discussion concerning ways in which the general competence of lawyers could be improved. The sense of the Board was that even a small number of incompetent lawyers are damaging to the profession and to the public and further, that although recent criticism by Chief Justice Warren Burger has directed attention to trial lawyers, the problem is not limited to that group of practitioners.

■ NEXT BOARD MEETING: May 19-20 in Vancouver, Washington. □

Approved Continuing Legal Education Activities

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Arbitration Advocacy
May 9-10, 1978: San Francisco 15.50

Contract Administration
June 8-9, 1978: San Diego 15.50

SEATTLE-KING COUNTY BAR ASSOC.

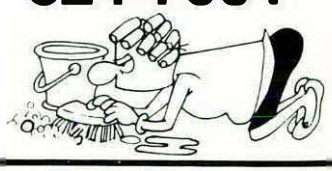
Antiboycott Law & Practice
May 8, 1978: Seattle 5.75

WASHINGTON STATE BAR ASSOCIATION

Mergers, Acquisitions & Sales Of Business Enterprises
May 5-7, 1978: Richland 12.50

Collection of Judgments
May 12, 1978: Olympia 5.00
May 19, 1978: Spokane 5.00
May 26, 1978: Seattle 5.00

Commercial Law III: Secured Transactions
June 2, 1978: Spokane 6.00
June 9, 1978: Seattle 6.00
June 16, 1978: Olympia 6.00
June 23, 1978: Yakima 6.00



Notice of Petition for Reinstatement of H. Victor Johnson

A hearing before the Board of Governors will be conducted on May 20, 1978 at 9:00 a.m., to consider the petition of H. Victor Johnson for reinstatement as a member of this Association after disbarment. Pursuant to Discipline Rules for Attorneys DRA 8.5, on or prior to the date of the hearing, anyone wishing to do so may file with the Board of Governors a written statement for or against reinstatement. Such statements are to set forth factual matters showing why the petitioner does or does not meet the requirements of Rule 8.6(a).

DRA 8.6(a) indicates that the Board of Governors may recommend reinstatement only upon an affirmative showing by petitioner that he possesses the qualifications and requirements for attorney applicants under the Admission to Practice Rules and that the petitioner's reinstatement will not be detrimental to the integrity and standing of the Bar and the administration of justice or be contrary to public interest. Except by leave of the Board of Governors, no person other than the petitioner or his counsel shall be heard orally by the Board of Governors. Letters or written statements should be directed to the Board of Governors, Washington State Bar Association, 505 Madison, Seattle, Washington 98104.

David Hoff To Be State Bar President 1978-79

David D. Hoff of the Seattle Firm of Thom, Navoni, Hoff, Pierson & Ryder, was named President of the Washington State Bar Association for 1978-79 by the unanimous vote of the Board of Governors at its March, 1978, meeting.

A 1962 graduate of the University of Washington Law School, Hoff was a law clerk for Justice Frank P. Weaver of the Washington State Supreme Court, 1962-63, and has been in private practice in Seattle since 1963.

He is a former member of the State Bar Board of Governors, 1974-77, and was Secretary-Treasurer of the Bar Association in 1977. Hoff will assume the Bar presidency at the conclusion of the 1978 Annual Meeting in Spokane in September.

Briefly Noted . . .

Christian Legal Society Luncheons

An opportunity to meet with Christian lawyers in an informal atmosphere. *Place:* Financial Center, Conference A-B Level. *Time:* 12:00...pick up your lunch at the deli on the same A-B Level and proceed to conference room. *Discussion Leaders:* May 18 — Bob Gunter, June 15 — Landon Estep.

Third Annual Convention of WLAA

The Washington Legal Assistants Association has invited all legal assistants and other interested people to attend their third annual Convention on May 19 and 20, 1978 at the Seattle Hilton. The program will feature three workshops on Friday and eight on Saturday, most of them running concurrently.

Topics this year will include: real estate sale and transactions, an introduction to Federal income taxation, issues in juvenile crime, the new Federal Criminal Code, and the legal and political aspects of women's self-defense.

An added feature this year will be a panel of speakers to discuss the topic: Clients In Crisis — The Role of The Legal Assistant. There will also be a panel of Legal Assistants who work in a criminal practice. They will describe their current duties and suggest ways to expand the profession. An additional panel on Trends in Anti-Discrimination Law will also be presented.

Notices

PROFESSIONAL

Dan P. Danilov of the Washington State Bar announces his availability to lawyers for consultations and referrals in U.S. Immigration and Nationality matters re: applications for nonimmigrant and immigrant visas, admission to United States, adjustment of status to permanent residence, and other proceedings before American Consulates abroad and U.S. Immigration Service in United States.

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For Sale: Complete set Washington Reports from 3 Terr. to 87 2d (current). Excellent condition. $3,000.00. Dick Nelson. (206) 455-3900.

For Sale: Complete set of Supreme Court Reports with Digest (Law Ed.). Current and excellent condition. $1,100. Phone Olympia (206) 357-9776.

For Sale: American Jurisprudence 2nd, complete, current. Excellent condition. $1,500. Contact Michael S. Manza at (206) 473-2771.

For Sale: ALR 1st and 2nd; CJS and Am Jur (thru 7 2nd); all good condition but not maintained since '63; call Bill Ingalls, Everett, (206) 259-2231.

Information Sought: Anyone having information about the Will or heirs of Mark K. Miller, please contact Byron P. Shaw, P.O. Box 6719, Kennewick, Washington 99336. (509) 586-0586.

Office Space Available: $1,100.00/month includes: Office, phone, library, secretary and receptionist. If interested please contact Wendy Gelbart at (206) 623-1422/1930 Bank of California Center.

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May 12	CLE Seminar: **Collection of Judgments in Washington,** Greenwood Inn, Olympia, Washington, half day, $25.00.
May 12-13	CLE Seminar: **Law Office Management,** Yakima Convention Center, Yakima, Washington, 1½ days, $75.00.
May 19	CLE Seminar: **Collection of Judgments in Washington,** half day, Ridpath Motor Inn, Spokane, Washington, $25.00
May 26	CLE Seminar: **Collection of Judgments in Washington,** half day, Washington Plaza Hotel, Seattle, Washington, $25.00

Special Immigration Issue: "Immigration U.S.A." is the emphasis of the February 1978 issue of *La Luz,* the national Hispanic monthly magazine. The issue is devoted entirely to an update of immigration laws and the rights of aliens. Contributing editors include such nationally recognized immigration attorneys as Charles Gordon, Maurice Roberts, Edward L. Dubroff, Allen E. Kaye, Richard S. Goldstein and Benjamin Gim. Special issue editor was attorney Dan P. Danilov. To order copies of this issue for you or your immigrant clients, send $2.50 to Rupert Hernandez, National Circulation Director, La Luz Publications, 8000 E. Girard, Suite 314, Denver, Colorado 80231.

POSITIONS

Wanted: Attorney with strong academic background and at least two years business practice to assume substantial responsibilities in Seattle with established medium-size firm. Confidentiality assured. Reply to Box 11, c/o WSBA.

Wanted: Corporate Counsel of Seattle based corporation is seeking an attorney with a minimum of three years business and corporate law experience to be Associate Counsel. Strong academic background required. Must be a member of WSBA. Position available immediately. Send resumes to Box 12, c/o WSBA.

Attorney Position Open:

Our firm is primarily engaged in labor law and civil rights defense work. We intend to add an attorney to our staff as soon as possible. The position requires: (1) admission to the Washington Bar within the last three years; (2) a superior academic record; and (3) the ability to read critically and write simply. Trial experience is not essential. Written resumes and copies of briefs, memoranda or law review articles should be mailed to Hugh Hafer, 2701 First Avenue, Seattle, Washington 98121.

Wanted: 1977 honors graduate University of Wisconsin Law School, commencing LL.M. Program in Law and Marine Affairs fall 1978 at U of W Law School, one year clerkship U.S. Attorney's Office, extensive research experience. Seeks part time position in Seattle while pursuing studies. Contact Wesley S. Scholz, 2336 E. Bradford Ave., Milwaukee, WI 53211.

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