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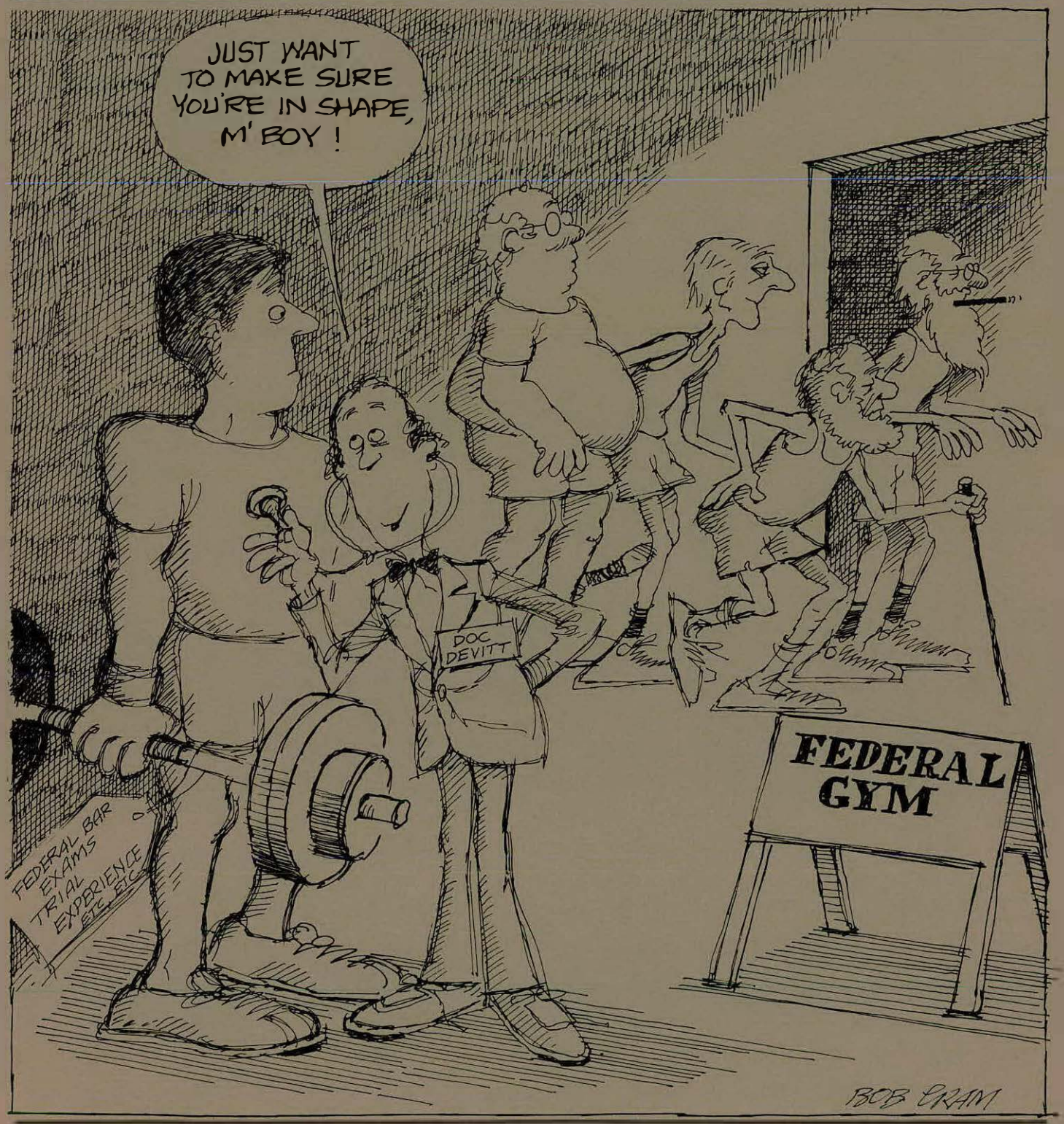
May 1979

WASHINGTON STATE BAR NEWS



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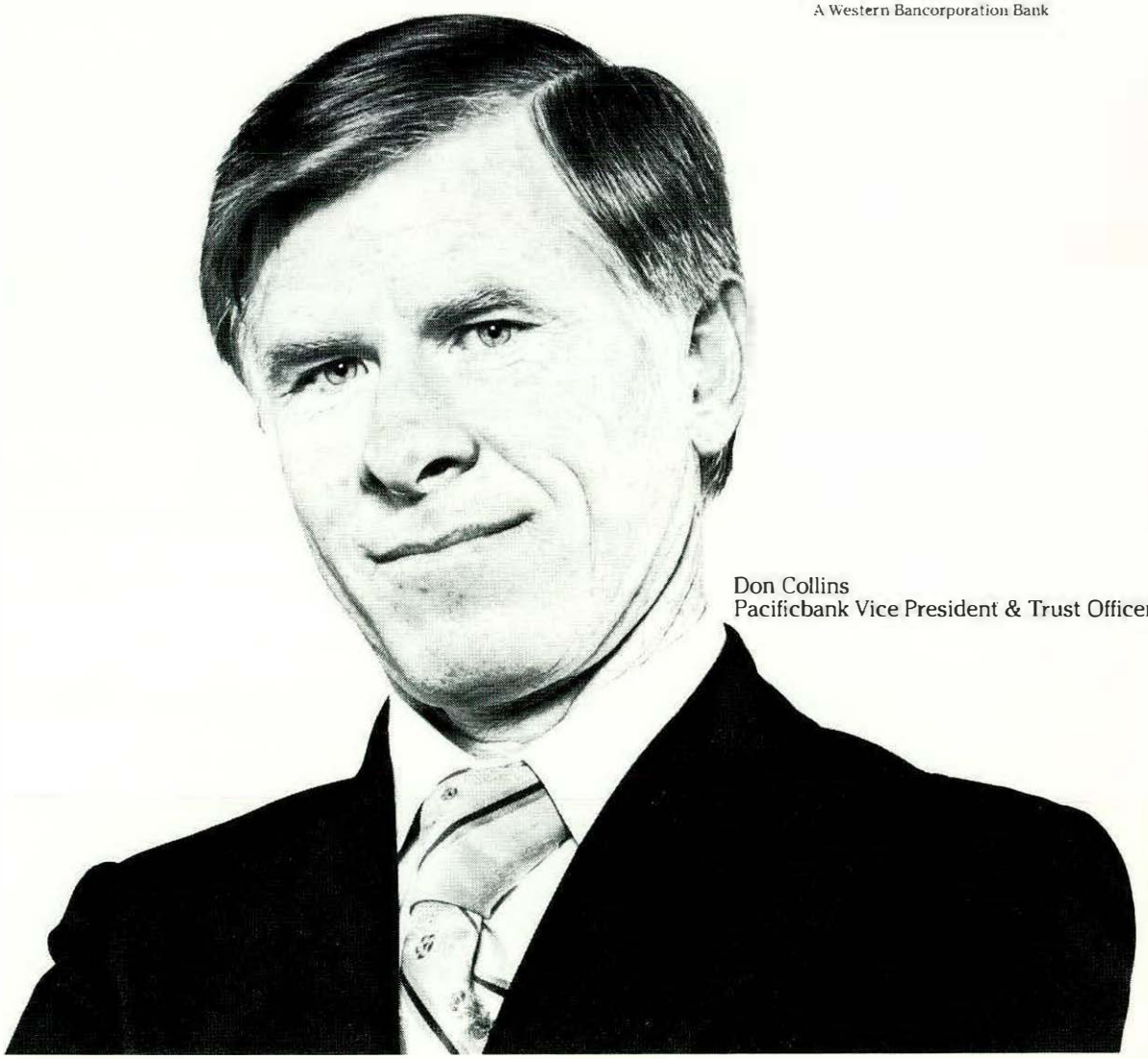

Don Collins
Pacificbank Vice President & Trust Officer

Volume 33, Number 5
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WASHINGTON STATE BAR NEWS

Our Cover

This month's cover, by Seattle artist Bob Cram of Graphic Studios, highlights Christopher L. Otorowski's article examining Devitt Committee proposals to improve federal trial advocacy. The article is based upon a recent random survey of this state's lawyers designed to elicit their views as to the merit of the Devitt proposals.

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Jay V. White, *Editor*

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Should Doctors Get Widow's Homestead?

Editor:

Frank Shiers, a prominent member of the Kitsap County Bar, after reading your last letter in regard to the continuing controversy as to whether the Award in Lieu of Homestead should be taken from the whole of the community property or only the decedent's one-half interest, was reminded of another problem existing in the same area which should be called to the Bar's attention.

Mr. Shiers is presently engaged in probating a small estate, the gross value of which is less than $40,000. Unfortunately, the medical profession felt it to be its collective duty to keep the terminally-ill decedent active for an additional two months by esoteric means at the expense of approximately $50,000. Mr. Shiers asked the writer if he could think of any way the widow's home could be set aside in lieu of homestead, since obviously there were no means of fulfilling the statutory requisite of paying or satisfactorily providing for the expenses of last illness. My only suggestion to Mr. Shiers was either to consult the various state and federal agencies on the reasonable probability that some governmental body would pay the medical and hospital expenses, or to try to find some judge with common sense, an admittedly difficult task, who would hold that the legislature in its infinite wisdom meant that only *necessary* expenses of last illness had to be paid.

It seems to me that the Bar Association should persuade the legislature to remove the condition that medical expenses be paid or satisfactorily provided for before an award in lieu of homestead is entered. I fail to see why the medical profession should receive more preferential treatment than other creditors. If the requisite of payment or satisfactory provision for payment of medical expenses is removed from the statute, it will have the further salutary effect of giving doctors a subject of conversation at cocktail parties other than the outrageous state of the income tax laws.

DUDLEY N. PERRINE
Port Orchard

Apology to Justice Utter (But I'm Not Guilty, Your Honor)

Editor:

On March 22 and 23 the media gave some publicity to remarks highly critical of Chief Justice Utter which were attributed, erroneously, to me. My initial efforts to correct the error were unsuccessful. A belated offer by the publication initiating the wrong to correct the error has been declined as useless. I would like members of the Bar to know that most of the quotations were invented or grossly exaggerated. One of a small minority in the professional group I serve concluded that it was appropriate to discuss with a reporter some aspects of the group's potpourri session. He did not purport to speak for the group or for attribution but, rather, advised the reporter of proposals the group had previously rejected. His reporter and confidant asked me to confirm the subject of this discussion and I endeavored to present a more balanced version of what had transpired. The perversion which resulted does not reflect my personal views nor the views of a great majority of my employers. Nothing in my prior limited experience with the press prepared me for what happened. Fortunately, I called Justice Utter immediately after the press inquiry to warn him that he might be asked to comment and to advise him of what had, in fact, transpired. This act was totally inconsistent with the venomous and unprofessional blast the media attributed to me.

In any event I owe Justice Utter an apology for things I never said which is tough to acknowledge but due nevertheless.

MICHAEL C. REDMAN
Executive Secretary
Washington Association
of Prosecuting Attorneys
Olympia

Editor's Page

When All Else Fails, Use English

Shortly after my third birthday — or maybe it was my thirtieth — I began to notice that there are some people who are smarter than I am. There are not so many that I lie awake late at night thinking about them, but they do cross my mind at times as I sit awake late at night before my deadline trying to write this column. They could write this column better than I can. Where *are* these people when I need them? Probably smart enough to be asleep somewhere.

It is a strain to write an editorial column. Editorials generally are written by people who don't know anything about what they are writing about, which explains why it is a strain to write them. For example, some day I may get around to writing about Ernest Gellhorn's resignation as dean of the University of Washington law school.

Bad writers always get around to writing about writing and, to keep that tradition alive, I offer the rest of this column.

The key to good writing is offered by William Strunk, Jr., and E.B. White in *The Elements of Style:* Omit needless words. If I followed that rule, then I would have begun this column with this paragraph, and omitted this sentence. Legal writing is no exception to this rule. If lawyers wrote brief, judges would read briefs. Nevertheless, as Strunk and White explain, the rule requires not brevity, but that "every word tell."

One of *The Elements* frequently overlooked by lawyers is the proper use of the word "however". "However" rarely belongs at the beginning of a sentence. However you happen to begin a sentence with that word, be sure that you don't mean "nevertheless".

Lawyers apparently enjoy creating new words without the benefit of new meaning by attaching words such as "in" or "of" to perfectly good old words. How else can we explain why legal writing is marked by "words" such as "wherein", "herein" and "therein"?

I cannot even begin to explain "hereinafter", "hereinabove" and "hereinbelow", to mention just a few of the aforesaid mentioned.

Here are some miscellaneous writing rules which I either invented or stole from somebody:

1. Do not use the word "myself". I, myself, am convinced that nobody knows how to use the word properly and, even when it is used properly, nobody knows what it means. It sends a chill down my spine (akin to the sensation of fingernails scraping a blackboard) when I read a letter from a lawyer, such as one recently addressed to the Director of Continuing Legal Education, which begins, "Myself and three of our firm's associates attended . . . ", and continues by describing a seminar which myself attended. Of course, when you go to a seminar, you invariably hear some speaker advise you to "see myself afterwards if you have more questions."

2. Do not begin a sentence with "of course" unless you mean "of course". Of course, if something really *is* "of course" you don't need to say so.

3. Avoid the use of cliches, such as, "It sends a chill down my spine"; "When all else fails", etc.

4. Avoid using "etc." Readers either do not know what the "etc." is, in which case you should tell them, or they do know, in which case "etc." adds nothing.

5. Do not use the word "hopefully". This word is like "myself": nobody remembers how to use it. "Forget it," he said hopefully.

6. If you do not use a dictionary, then you should memorize how to spell "accommodate". If you forget how to spell that word, look it up in a dictionary.

7. Avoid exclamation points!

Perhaps, by now, you wish that I sooner had remembered a rule set forth in an old handbook for Associated Press writers: Never forget that the period is the noblest of punctuation marks.

JVW

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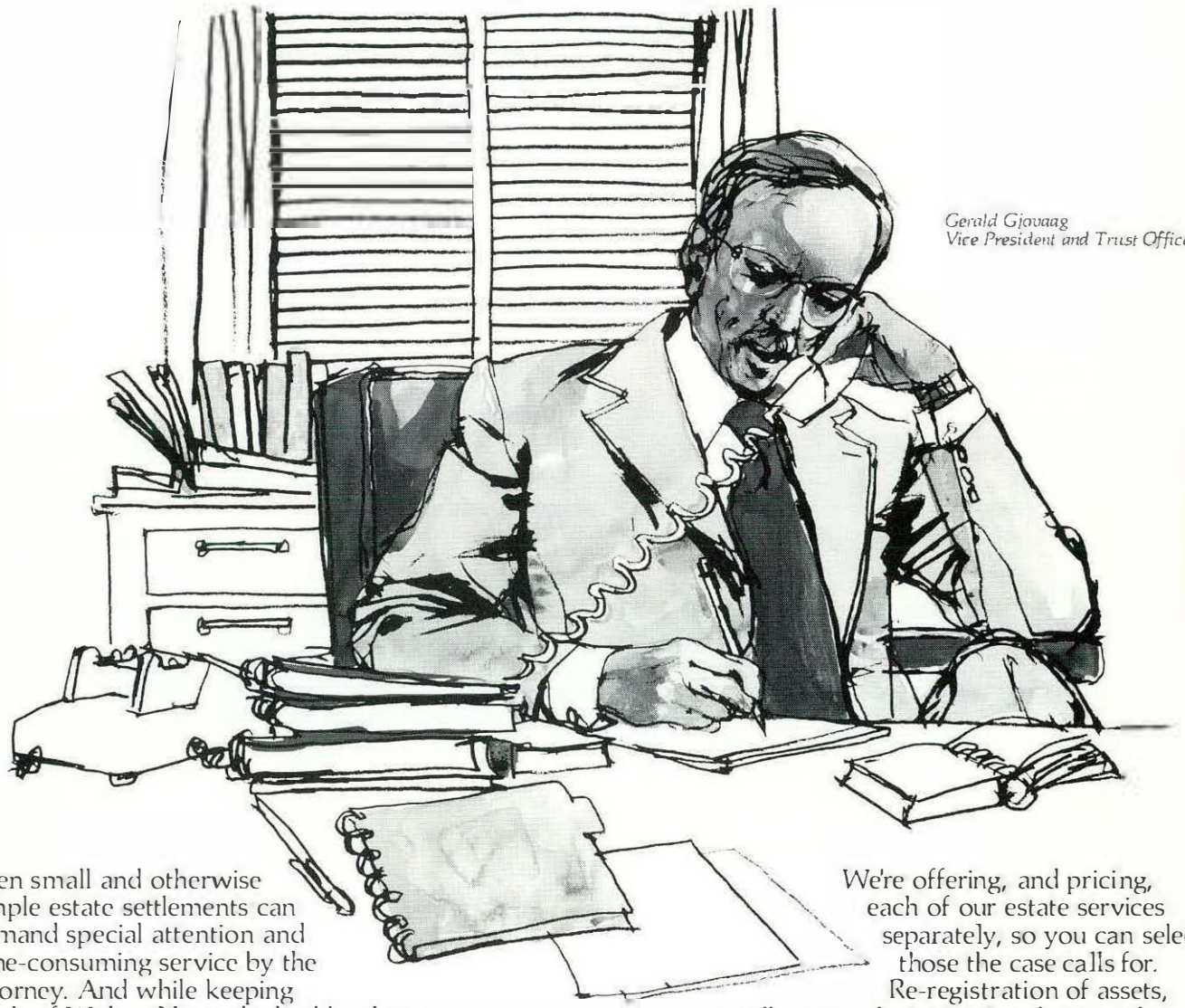

Gerald Gjovaag
Vice President and Trust Officer

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Integration By Court Rule

At the April meeting of the Board of Governors, the Board voted to petition the Washington State Supreme Court to integrate the Washington State Bar Association by Court Rule, thereby abrogating the Washington State Bar Act (RCW 2.48).

This decision culminates over four years of study and consideration by the Board of Governors. The principal reasons for this step revolve around the cumbersome and often times hazardous method of obtaining changes in the operational rules of the Bar Association required by changes in the profession and in society generally. As an example, the Board has frequently contemplated changing the residency requirements for electing members to the Board of Governors to the place where the lawyer practices rather than where the lawyer lives. This is becoming an increasing problem in Western Washington where many lawyers who practice in Seattle live in the second and sixth congressional districts. Many of these lawyers feel that they should be allowed to vote for members of the Board of Governors representing the present first and seventh congressional districts or King County at large. Likewise, there are lawyers who practice in the second and third congressional districts who live in the Greater Seattle Area and have no effective voice in electing members of the Board of Governors who represent the areas they practice in.

Another concern is often voiced by lawyers who practice in Clark County, part of the fourth congressional district (primarily an Eastern Washington district) who feel that they have much more in common with lawyers in Thurston County and should be represented by the third congressional district governor.

A third problem which has concerned the Board for many years is the inactive membership fee currently set by statute at $2.00 per year (RCW 2.48.140). This fee does not currently cover the cost of mailings to inactive members, much less the costs involved in changing their status from inactive to active and back again, which occurs frequently.

All of these items, together with many others, should be reviewed periodically and changes should be made in the operational rules of the Bar Association to accurately reflect the desires of our members as well as keeping pace with the changes in our profession and society generally.

The reason that these changes have not been made is because of the concern that many of our members have of asking the state legislature to amend the Bar Act. It is felt that because of the lack of lawyers in the legislature and the recent tendency of many state legislators in this state and elsewhere to attack the legal profession, that opening the State Bar Act to the legislative process should be avoided. As a result, there has been a certain amount of inertia in trying to achieve needed changes in our association.

In light of *Graham v. State Bar Association*, 86 Wn. 2d 624, 548 Pac. 2d 310 (1976), it is particularly incongruous that we operate under a legislative enactment rather than Supreme Court Rule. As stated in the *Graham* case:

> "'The Bar Association, we recognized, is an association that is sui generis, many of whose important functions are directly related to and in aid of the judicial branch of government.
>
> . . . We have subsequently reaffirmed the fact that the source of the Court's power to admit, enroll, disbar and discipline is exclusively in the Supreme Court as one of its inherent powers . . . Nothing in our constitution prohibits this Court from the exercise of its inherent power in this manner as well. It was not necessary therefore, for the legislature to act to accomplish the purpose achieved by the 1933 legislation (the State Bar Act). The power to accomplish the integration of the Bar, its supervision and regulation is found first in this Court, not the legislature. The legislature's characterization of the Bar as an "agency of the state" does not deprive this Court of its right of control of the Bar and its functions as a separate, independent branch of government.'"

The *Graham* opinion leaves no doubt that the Supreme Court does control the Bar Association and all of its functions. It would therefor appear to be inappropriate and unnecessary to achieve changes in the State Bar by petitioning the legislature rather than petitioning the Supreme Court.

Integrated Bar Associations throughout the country are generally under attack today by Federal Regulatory Agencies as well as state legislatures. One of the prime defenses to these attacks has been that we are in fact under the supervision and control of the State Supreme Court and the principle of separation of powers should prohibit the regulation of lawyers by Regulatory Agencies or state legislatures. It is not our intent, nor is it possible to insulate lawyers from valid concerns of the public requiring lawyers to be regulated in the public interest, however, as stated in the *Graham* opinion:

> "We have earlier made clear that the regulation of the practice of law in this state is within the inherent power of this Court. This is a holding of the vast majority of courts in this country that have considered this issue."

In a world of accelerated change, it is important that we have the ability to keep pace without concern of exposing ourselves to politically motivated attacks. It is preferable to seek changes in the profession from those who understand the profession.

WSBA Survey Results

What Can Be Done to Improve Federal Trial Advocacy?

Washington Lawyers Offer Their Views As to Whether Devitt Committee Proposals Would Do Any Good in This State.

By **Christopher L. Otorowski**

[This article is based upon an 82-page report prepared by the author on behalf of the Bar Association's Board of Governors in response to proposals of the Devitt Committee for the implementation of uniform standards of competency for lawyers practicing in federal trial courts. The Board has gone on record as being opposed to Devitt Committee proposals which would establish new requirements for admission to federal courts–such as a four-trial "experience" requirement and a federal bar examination–but favoring proposals directed to improved training for lawyers and law students in trial advocacy skills. The report is based upon the views of 1080 Washington lawyers who responded to a recent random survey designed to elicit the opinions of this state's lawyers about various issues raised by the Devitt Committee proposals. It constitutes the basis for testimony presented by the author and Bar Association President David D. Hoff at public hearings before a panel of the Devitt Committee in San Francisco, April 5-6. –Ed.]

Christopher L. Otorowski was asked by the Board of Governors to conduct the study which is the subject of this article. He is an Assistant Attorney General for the State Department of Labor & Industries in Spokane. He received his J.D. and M.B.A. degrees from the University of Denver in 1977.

Introduction

Concern about the quality of advocacy in federal trial courts was identified in a meaningful and well-publicized fashion by Chief Justice Warren Burger when he delivered the Fourth John F. Sonnett Lecture at Fordham University in 1973. At that time, he indicated in a conclusory manner that the legal profession must face up to and reject the notion that every law school graduate and every lawyer is qualified, merely by being admitted to a state bar, to perform as an advocate in federal trials involving matters of a serious consequence. The Chief Justice also called for the bar to set aside any pending proposals for broad and comprehensive specialty

certification until positive progress has been made in the crucial specialty of trial advocacy. He indicated that some means must be developed to evaluate the qualifications of lawyers to perform competently as trial advocates. He urged the ABA, the Federal Bar Association, the American College of Trial Lawyers, the American Association of Law Schools, the Federal Judicial Center and the National Center for State Courts and others to arrive at concrete and comprehensive proposals to develop competent trial lawyers.

Chief Justice Burger's remarks became the foundation of efforts begun in 1974 by the Second Circuit to study the apparent problem, and to implement rules governing practice in federal district courts in the Second Circuit. The Clare Committee, named after its chairman, Robert L. Clare, Jr., of New York, studied the problem and gathered opinions from the bench, the practicing bar and legal educators, and finally implemented certain rules for practice. Subsequently, in 1976, as recommended by the Second Circuit, a committee of the Judicial Conference of the United States was appointed by Chief Justice Burger to study the perceived problem and identify possible solutions. That committee has come to be known as the Devitt Committee, after its chairman, Chief Judge Edward J. Devitt of Minnesota. The Devitt Committee is composed of twelve federal judges, six prominent legal educators, six prominent members of the practicing bar, and four law student consultants (all of whom are now graduated and actively practicing law).

The Devitt Committee has conducted its deliberations for nearly three years. The main statistical foundation for its deliberations has been a report published in 1977 by the Federal Judicial Center entitled "The Quality of Advocacy in the Federal Courts". That report includes data collected from several different sources, primarily active federal district court judges; active judges in the U.S. Court of Appeals; and lawyers who regularly practice in those courts. The data generated by the Federal Judicial Center Study (FJC Study) is quite extensive and provides much concrete material for discussion.

The Devitt Committee has performed its own analysis of the FJC Study and implicitly concluded that there is a problem with the quality of advocacy in the federal courts and that the problem can be corrected. Having made that implicit conclusion, the Committee has proposed recommendations for potential solution of this problem. Those recommendations have been circulated widely and were the subject of public hearings at four locations around the country in April, 1979. The location nearest Washington was San Francisco, and at that hearing, the Washington State Bar Association and virtually all other affected legal entities in Washington presented their respective views. The Committee's next deliberations, scheduled for this summer, will precede the Committee's final recommendations to the Judicial Conference later this year. The primary objective of the recent survey (WSBA Survey) of Washington lawyers was to gather data upon which to base a comprehensive response to the Devitt Committee proposals and to answer the following questions:

1. Is there a problem with the quality of advocacy in Washington's federal and state courts?
2. If such a problem exists, is it correctable?
3. If it is correctable, what solutions exist that would deal effectively with the problem?
4. How would the solutions proposed by the Devitt Committee deal with the problem?
5. What would be the usefulness and impact of the Devitt Committee recommendations if they were implemented?

The survey included a mail questionnaire sent to a random sample of approximately 2000 Washington lawyers. Fifty-five percent (1080) of those lawyers surveyed actually responded prior to the cut-off date for tabulation.[1] Reactions of the Federal Judiciary in Washington were also solicited and obtained.

Devitt Committee Recommendations

The Devitt Committee has summarized their tentative recommendations as follows:

1. Minimum uniform standards of competency for attorneys in federal trial courts should be implemented by uniform district court rules providing for an examination in federal practice subjects, and four trial experiences, at least two of which must involve participation in actual trials.

2. Attorneys admitted to the federal bar before the effective date of the adoption of the new standards should not have to satisfy the examination requirement.

3. Each district should adopt these standards as implemented in a uniform rule and create a District Committee on Admission.

4. A performance review system should be instituted in each district to assist in improving the performances of attorneys practicing in that district, and a District Performance Review Committee should be created in each district.

5. District Courts should adopt a student practice rule to provide second and third year law

[1] Results of the mail questionnaire were tabulated and analyzed by computer at Eastern Washington University. The author wishes to express his appreciation for the valuable assistance of Paul Ohler in utilizing the computer at EWU.

students an opportunity to participate, under close supervision, in the preparation and trial of actual cases.

6. Law schools, with the support of the bench and bar should make available to students the opportunity to take trial practice courses and to engage in supervised simulated trials.

7. District Courts, in cooperation with bar associations and law schools, should periodically sponsor seminars on federal practice subjects and improvement of trial skills.

8. A Standing Committee on Admission to Practice of the Judicial Conference should be created to oversee the development and implementation of uniform national standards.

9. A Committee on Admission to Practice of the Judicial Conference should study developments in testing methods for determining trial skills, the need for continuing qualification of all members of the bar and the feasibility of sponsoring programs for continuing legal education, particularly with respect to knowledge and developments affecting federal practice, procedure and trial advocacy.

10. The American Bar Association's Code of Professional Responsibility should be examined with a view towards giving more particular and specific guidance to standards for trial advocates.

The Federal Judicial Center Study

The FJC Study utilized a case reporting system which required each participating federal district judge to file a report on each trial conducted during a designated four-week period in the spring of 1977. Further data was obtained through subsequent questionnaires sent to all district judges and also from lawyers' biographical questionnaires directed to the lawyers who were the subjects of the case studies. Data was also collected from a sample of lawyers drawn from the docket sheets of the district courts and the courts of appeals in an attempt to obtain opinions from those lawyers who had enough federal court experience to generate a reliable data base.

The FJC Study also involved an "internal validity test" in the form of a video tape study. Eighty-nine district judges were asked to observe identical video tape segments of trial court performances by lawyers and to evaluate those on the same scale as used in the case reports. The purpose was to determine the extent to which the judges applied mutually consistent standards in evaluating performances of the lawyers. This video tape study specifically was suggested by the Devitt Sub-

committee on Procedures and Methods as a way to determine the overall usefulness and reliability of the data generated by the questionnaire and case report technique.

The key statistic from the FJC Study, upon which most of the Devitt Committee's recommendations hinge, is that 8.6% of the district judges' ratings of lawyers' trial performances were "Not Quite Adequate;" "Poor;" or "Very Poor." The overall results were set forth in the accompanying Table 1 of the FJC Study.

Table 1, FJC Study

District Judges' Ratings of Lawyers' Trial Performances

Rating Category	Number of Performances	Percent
First rate: about as good a job as could have been done	412	20.9%
Very good	517	26.3
Good	532	27.0
Adequate but no better	328	16.7
Not quite adequate	100	5.1
Poor	52	2.6
Very poor	17	0.9
Not rated	11	0.6
Total	1,969	100.0

The video tape study was one approach undertaken to determine if the reports of inadequate performances (i.e. 8.6%) provided a reliable estimate of the number of performances that are in fact inadequate under some generally accepted standard. The conclusion of the FJC Study was that the "videotape study shows that judges' ratings of performances, using the seven-point scale that was used in the case reports, are not highly consistent."

The Devitt Subcommittee on Procedures and Methods anticipated this potential problem with regard to consistency of criteria utilized by a rating judge in a report dated December 8, 1976:

> The video tape experiment is designed to test the assumption by determining whether, when the same performance is evaluated by a number of judge and lawyer evaluators, their judgments are reasonably consistent. If they are reasonably consistent, it seems justified to conclude that evaluations of lawyer performances do indeed reflect some underlying consensus about the appropriate standards of judgment. *If the ratings in the video tape experiment were highly inconsistent, on the other hand, it would cast substantial doubt on the usefulness of the data generated by the questionnaire and case report technique.* [Subcommittee report, p. 11, emphasis added]

The Devitt Committee, by its own admission, believes that a "substantial doubt" could be cast on the statistics generated by the FJC Study. This statistically weak link has not been accorded proper respect by the Devitt Committee as demonstrated by its unqualified reliance on the FJC data. Further, there has been no sophisticated statistical analysis presented regarding the reliability of the basic data relied on by the Devitt Committee.

It is submitted, that by reason of the video tape test alone, that the conclusion of 8.6% inadequacy is not justified. Further, statistical analysis on the data demonstrates empirically that the figure is not reliable.

The Federal Judicial Center Study is limited in its scope and by its own acknowledgment does not purport to evaluate remedies for inadequacy in the legal profession, i.e., there is nothing in the research that would demonstrate one remedy is any more effective than another. The Devitt Committee apparently has relied on its own deliberations and intuition in arriving at the proposed recommendations. The study undertaken by the Washington Bar Association was aimed, in part, to increase the available knowledge regarding possible remedies.

Principal Findings of the WSBA Mail Survey

Demographics

Some basic questions were asked with regard to

demographic characteristics of the respondents. Those questions elicited information regarding:

1. Number of years respondent has been practicing in any state.
2. Practicing status of individual respondents.
3. Professional associations respondent belongs to.
4. Community or area in which respondent's office is located.
5. Type of practice respondent is engaged in.
6. Branch and nature of government practice.
7. Number of lawyers in firm if in private practice and not a sole practitioner.
8. Federal practice subject areas in which respondent has enrolled and received instruction.
9. Percentage of respondents admitted to practice in the federal courts.
10. Awareness of Devitt Committee.
11. Trial experiences of respondent in federal, and state courts.
12. Number of respondents who were lead counsel or assisted lead counsel in actions lasting six full days or more.
13. Percent of those who felt they would qualify for a proposed four trial experience requirement.

Highlights of the data generated include the following:

Fully 36.2% of all Washington lawyers responding had been in practice four years or less, and 89.2% are actively practicing full time. Seattle/King County is by far the largest community or area for practice counting 51% of all respondents. 14.4% of this state's lawyers are employed by state, municipal, or federal governments. The most prevalent form of practice is a partnership (43.1%) but 24.1% are sole practitioners (with nearly one-third of them engaged in some form of group practice).

84.3% have received some form of instruction in legal ethics; 77.9% have received instruction in trial advocacy; and 81.7% have received instruction in the Federal Rules of Civil Procedure.

79.9% had been admitted to practice in a federal district court. 73.4% were admitted to practice in the Western District and 27.5% were admitted to practice in the Eastern District. Presumably, there are some lawyers who are admitted in both. Two-thirds of those not admitted to practice in the federal court desire to be admitted.

Only 31.4% of those responding previously were aware of the Devitt Committee, and only 18.4% were aware of the Devitt Committee's recommendations.

The trial experience of the respondents appears to be quite substantial. For example, fully 75.9% have been lead counsel in a one-day civil trial, and 61.6% have been lead counsel in five or more civil trials in superior court. 36.4% have been lead counsel in a federal civil trial and

15.9% have been lead counsel in five or more civil trials in federal court. The experience demonstrated in criminal actions was not as extensive.

A great number of respondents have been engaged as lead counsel or assisted lead counsel in actions lasting six full days or more. Fully 43.9% have been involved as lead counsel or assisted lead counsel in at least one trial lasting six full days or more. 17.8% had five or more such experiences.

Opinions on Devitt Committee Recommendations

1. Trial Experience Requirement—One of the primary recommendations of the Devitt Committee involves a "four-trial experience" requirement. There has been much debate within the Committee regarding implementation of this proposed requirement, including whether there should be a two-tier process by which anyone admitted to the respective state bar (first tier) would be eligible to handle all matters in a *civil* proceeding *short* of the unsupervised conduct of a trial. The second tier would involve a "trial bar," subject to certain minimum standards (including the experience requirement) as a prerequisite to handling any criminal matter and the unsupervised conduct of a civil trial.

In the WSBA survey, respondents specifically were asked whether they would qualify if a "four trial experience" requirement was implemented. 80.6% felt that they would qualify. The percentage who felt they would qualify increased with the number of years in practice. A greater percentage of members of the Washington State Trial Lawyers, the Federal Bar Association, or the American Trial Lawyers Association, felt they would qualify than non-members. Those lawyers practicing in private firms of 3-15 lawyers were more apt to qualify than those in smaller or larger firms.

The relative frequencies of opinions regarding implementation of the "four trial experience" requirement are set forth in Table 1. The narrow majority of respondents indicated that the experience requirement should not be implemented as a precondition to handling civil matters and that "grandfathering" (waiving requirements for present members of the federal bar) should not be allowed in that situation. A slight majority, however, favored such a requirement as a precondition to admission to handling criminal cases and 59.1% felt that "grandfathering" in that situation should not be allowed.

The results are better defined regarding opinions of the requirement as a precondition to the unsupervised conduct of a trial. In civil matters, 57.9% felt the experience requirement should be implemented and 58.4% felt "grandfathering" should not be allowed. Regarding the unsupervised conduct of a criminal trial, 63.6% felt that such a requirement should be implemented and 63.9% felt that "grandfathering" should not be allowed.

Generally, the data contained in Table 1 tends to support the notion of a bar/trial bar arrangement, and that "grandfathering" should not be allowed. With the possible exception of the unsupervised conduct of a criminal trial, however, there is not a clear-cut substantial majority opinion, i.e., it would be difficult to maintain that a consensus exists.

Nevertheless, the data indicates less support for the experience requirement as a precondition to admission and greater opposition to "grandfathering" by those respondents who have been in practice only a short time. Regarding the experience requirement as a precondition to the conduct of an unsupervised trial, there seems to be less of a distinction. It still appears, however, that those who have been in practice a substantial period of time are more in favor of "grandfathering" than were the junior practitioners.

As would be expected, those who felt they would already qualify for an experience requirement were more ready to adopt such a requirement, particularly as a precondition to admission to practice; however, there appeared to be little difference in the attitude towards "grandfathering". The majority in each case indicated they were opposed to grandfathering. The difference in attitudes was less noticeable regarding the experience requirement as a precondition to the conduct of an unsupervised trial. Those who felt they would qualify

were still more in favor of adopting the requirement than were those who felt they would not qualify. There was no significant difference in the opinion regarding "grandfathering" in this situation.

Cross tabulation of the opinions by the number of lawyers in the firm (excluding sole practitioners) revealed a surprising statistic. Of those practicing in a law firm between 16 and 20 lawyers, 81.8% felt the experience requirement should be implemented as a precondition to practice in the federal courts in a civil matter and 76.9% held that opinion for criminal matters. Further, their opposition to "grandfathering" in both civil and criminal cases was stronger than lawyers in other law firms. This same attitude held true, although the margin is not wide, with regard to the experience requirement as a precondition to the conduct of an unsupervised trial. There is no readily available explanation for this.

In sum, it would appear that the concept of a two-tier system would have some support in the State of Washington, although only by a slight majority. Generally, "grandfathering" was not favored under any circumstance.

2. *Performance Review Committees* — It has been proposed by the Devitt Committee that there be established certain professional performance review committees to review instances of inadequate trial performances. A slight majority of the lawyers in Washington are opposed to establishing such committees. (See Table 2) The Devitt Committee acknowledges there has been much debate regarding possible lay representation on such committees, assuming they are established. An overwhelming number (76.9%) of the lawyers responding are opposed to lay representation on such committees. There did not appear to be any significant difference of opinion between newer practitioners and older practitioners, except that newer practitioners were more in favor of the establishing of such committees. Regarding lay representation, there was a clear trend showing that new admittees, although still opposing lay representation, were not as strongly opposed as those who had greater experience.

Members of the Federal Bar Association and the American Trial Lawyers Association were stronger than non-members in their opposition to establishing such committees. Members of WSTLA, the Seattle-King County Federal Bar Association, ATLA, and the ABA were stronger than non-members in their opposition to lay membership. A slight majority of those who felt they would not now qualify for the experience requirement were in favor of establishing such committees; their opposition to lay membership was not as strong as those who already could meet the experience requirement. The size of the law firm does not appear to affect the opinion

regarding establishment of the committees with the exception of the 16-20 member firms. Of lawyers in those firms, 64.3% were in favor of establishing such committees; their response with regard to lay membership was not significantly different from that of other practitioners.

Again, there is no real consensus regarding establishment of peer review committees, although a slight majority are in opposition. It is clear, however, that respondents are strongly opposed to lay representation if such committees are established.

3. Examination in Federal Practice Subjects — Of those responding, 56.8% were opposed to a "federal bar examination." (See Table 3) Of those who had encountered inadequate representation, 48.6% were in favor of a federal bar exam and 51.4% were opposed. This appears to be a slight difference and probably not significant although, on its face, it would tend to support the notion that those who have encountered inadequate representation feel that a federal bar exam might lessen the instances of such substandard representation.

Is There A Problem with the Quality of Advocacy in the Federal Courts?

The Devitt Committee, through the FJC Study, has concluded that 8.6% of federal trial performances are less than adequate and that therefore a problem exists; however, the FJC Study began with the premise that there was a problem. Its specific direction was to develop data on three questions (FJC Study at page 1):

1. The importance of the problem of inadequate trial and appellate advocacy;

2. Whether inadequate advocacy is a more important problem among some segments of the profession than among others;

3. Whether certain aspects of trial or appellate performance can be identified as particularly appropriate targets for improvement efforts.

As noted previously, the Devitt Committee implicitly has concluded that the 8.6% statistic represents a problem that is in need of correction and that is, in fact, correctable. Nevertheless, there appears to be a severe lack of reliable data that would support this broad conclusion. Data from the survey of Washington lawyers indicates (Table 4) that 21.5% of those responding had in fact encountered inadequate representation in the federal courts. Of those, the overwhelming view was that inadequate representation occurred in under 10% of the cases tried. (See Table 5) The data from the Washington survey is not directly comparable to the FJC Study due to the difference in both the data collection instruments and the respondents. It would appear, however, that the instance of "inadequate representation" is not very large.

In an attempt to identify reasons for such inadequate representation, the respondents were asked to rate suggested reasons. (Table 6) The primary reason cited by 51.3% of those responding was "poor planning and management of litigation". The remainder of the reasons, with the exception of "conflicting interests" received a much lower response. No definition was supplied for "poor planning and management of litigation" but its immediate connotation would be in the nature of pretrial procedure, including discovery and preparation of the case for litigation. (Significant common responses generated by the "other" choice, were "laziness" or "inadequate preparation". Both of these could conceivably be included in the primary choice of "poor planning and management of litigation".) Poor knowledge of procedure, evidence, law of the case and marshalling of the facts were cited as reasons for inadequate performance more frequently than forensic ability, conflicting interests and general legal knowledge.

It is submitted that this data demonstrates that there is some question as to the correctable nature of any perceived problem of inadequate trial advocacy. If "poor planning and management of litigation" involves pretrial work and general organization of the case, then it is doubtful that a federal bar exam, the requirement of specific law school courses or trial experience require-

ments will solve the problem. Further research is necessary to draw a firm conclusion.

Is The Perceived Problem Correctable?

The FJC Study concludes that "on the whole, the rating presents a very favorable picture of the quality of advocacy in the district courts." The Devitt Committee is attempting to improve an already bright picture with regard to advocacy in the federal courts. The Devitt Committee has identified three primary solutions to the perceived problem: a trial experience requirement, a federal bar examination, and professional performance review committees. The Committee had no hard data upon which to base these recommendations and one purpose of the WSBA survey was to attempt to identify what solutions would be most likely to solve the perceived problem. (See Table 7) Respondents were asked to rate suggested solutions in order of importance. Significantly, expansion of CLE requirements; monitoring by judges, lawyers, or special panels; and experience requirements were the primary solutions identified by the respondents. Equally significant, however, was the high response of "no solution" and "other" (which in many cases was equivalent to a "no solution".)

Cross tabulation of the perceived solutions by those who have encountered inadequate representation of the federal courts showed that special panels were highly regarded as the primary solution, with CLE and experience requirements tying for third. Again, of equal significance, was the notion that there is no solution. This concept hypothetically can be identified with the reasons of inadequate preparation and laziness. The conclusion from that would be that if in fact a problem exists, it is not capable of correction.

Usefulness and Impact of the Devitt Recommendations

The Devitt Committee has called for an experience requirement and although the WSBA Survey indicates that such a requirement would not be overwhelmingly accepted nor rejected, it does have some support. Further, the survey shows that lawyers believe that an experience requirement could solve the perceived problem, assuming it is correctable. The "problem" only occurs in a relatively small number of cases, and it is notable that the FJC Study found that 4.3% of the *appellate* advocacy performances were "inadequate", but the Devitt Committee concluded that this problem is not of sufficient magnitude to justify the imposition of standards.

The Devitt Committee favors "grandfathering", presumably due to the administrative burdens that would be caused thereby, but that ignores the strong, well-founded argument, that to do so would be to perpetuate the inadequacy that already exists. Further, the WSBA

Survey indicates this state's lawyers are opposed to "grandfathering" in any situation. The question of "grandfathering", however, may be nearly moot because of the high incidence of those who feel they would already qualify under an experience requirement.

Regarding the proposed federal bar examination, the WSBA Survey indicates strong opposition and, in fact, the data generated by the FJC Study shows that the problem, as the judges perceived it, did not lie in the knowledge of federal practice subjects which would be tested in the examination. The WSBA Survey shows that most lawyers have received instruction in the various federal practice areas.

The performance review system proposal is not overwhelmingly accepted nor rejected in Washington, but nevertheless was identified as a primary solution to the perceived problem by respondents.

The Devitt Committee apparently has disregarded administrative and financial burdens that would result from implementation of any of its recommendations, including the financial impact on clients and the resulting effect upon availability of legal services. This aspect is extremely important and would appear, from a superficial examination, to outweigh the potential benefit suggested by the somewhat weak data cited by the Devitt Committee. No data has yet been developed on a cost/benefit basis but financial concerns frequently were expressed by survey respondents. This area is ripe for further study.

Viewpoint of the Active Sitting Federal Judges in Washington

A cover letter and accompanying questionnaire were mailed to each of the active sitting federal judges in Washington. The questionnaire was composed of two parts. The first was a request for opinion on the specific Devitt proposals and also a rating of trial performances in each judge's courtroom during the last year. The second portion was the same questionnaire which was mailed to district judges by the Federal Judicial Center in 1977.

Only one of this state's five active federal district court judges participated in the Federal Judicial Center's Study. (Overall, the FJC Study had received a very high rate of response.) It would appear that the opinions of the federal judiciary in Washington were not included in the FJC Study with the exception of those of one judge.

The FJC Study included the conclusion that "performances regarded as inadequate are spread fairly uniformly across the circuits, with the possible exception of the Ninth." The FJC Study indicated the Ninth Circuit had an overall showing of 4.5% inadequacy, with the rating attributed to the federal judges in Washington being 5% inadequacy. The Study concluded that "the views expressed by the judges who responded to the

question can safely be accepted as a close approximation of the views of all district judges." Responses from the judiciary in this state to the WSBA survey clearly indicate that conclusion is unsupported.

All five active sitting federal district judges participated in the two-part survey. The essential conclusion drawn from the survey is that the active sitting federal judges in this state do not feel that there is a problem regarding the quality of advocacy in their courts; in fact, they feel the quality is quite good. Two of five judges felt that there should be an examination in federal practice subjects as a minimum uniform standard. (It should be noted that many federal practice subjects are subsumed in the current Washington State Bar Examination but questions in those areas are not graded separately.)

The judges were unanimous with regard to their opinion on all other Devitt proposals. They indicated that the four-trial "experience" requirement is unnecessary; performance review committees would be difficult to establish and maintain and would be of doubtful assistance; a student practice rule would be counterproductive to the business of the court and adequate experience is afforded under the Rule 9 program currently existing within Washington; and that law schools should make more trial practice courses available. Continuing legal education programs are supported by the judges and they all believe that active ongoing programs in their respective districts are good. The judges are willing to participate in federal practice programs but would not sponsor them. Regarding the proposal to tighten up the Code of Professional Responsibility as it relates to trial advocacy, the judges expressed concern about any attempt to redraft the Code in any way which further would limit access to the federal courts.

The essence of the judges' opinions was that there is no problem of any significance in their courts that justifies taking the extreme steps proposed by the Devitt Committee. At the recent meeting of the Judicial Conference of the United States, informal reactions of representative judges from each district showed that few are in favor of the Devitt proposals. The general view is that some districts may have a problem significant enough to warrant evaluation of a change in admissions policy, but that most districts do not.

Summary and Conclusions

The following is a summary of positions taken by this bar association's Board of Governors in a resolution adopted March 16 (*Bar News* 33:4:28), and prepared for presentation to the Devitt Committee.

Bar Examination and Trial Experience Requirement

The Board opposes the trial experience requirement and the bar examination requirement for the basic reason

that there is no evidence supporting the view that a problem exists with regard to the quality of advocacy in the federal courts in Washington and, if there is such a problem, the Devitt proposals will not solve it. The existing state bar examination includes a number of federal practice subjects, specifically civil procedure; evidence; federal jurisdiction; trial methods and legal ethics. Thus, it is doubtful that a further examination in federal practice subjects is necessary.

"Grandfathering"

The Board indicated it need not take a position on "grandfathering" because of its conclusion that there is not a correctable problem in this state and that the Devitt proposals would be of no effect; however, the Board is opposed to "grandfathering". "Grandfathering" merely would perpetuate the problem that already exists, and there has been no demonstration that any perceived problem is caused by newer members of the Bar.

District Committees on Admission

The Board is opposed to establishment of such committees because there is no justification for such committees in the absence of a correctable problem. No change should be made in the admissions procedure.

Performance Review Committees

The Board approves the concept of voluntary assistance by senior members of the Bar to junior members with regard to trial performance. The Board recognizes the hardship and difficulties of establishing and maintaining an ongoing peer review system. The administration of such a plan would be unduly burdensome. Voluntary assistance, however, by those who wish to help those who may request help presumably would be beneficial.

Student Practice Rule

The concept of student practice in the State of Washington has existed for some time under the Rule 9 system. Under that system, second and third year law students are afforded the opportunity to practice under supervision in state superior and district courts. Although the Board approves the principle of a student practice rule, it believes Rule 9 offers a sufficient opportunity for experience and, because of the current backlog of cases in federal court and the difficulty in administering a separate program, it is unnecessary and inappropriate to request that such a practice rule be adopted in the federal system. (The federal judges indicated that adoption of such a rule would impair efficiency and tend to perpetuate the current backlog of cases.)

District Court Participation in Federal Practice Seminars

The Board supports the principle of cooperation by the judiciary in federal practice seminars. The judiciary indicated that it does not want to sponsor any such advocacy seminars because it would be inappropriate to do so; however, the judges would participate in such programs, when asked. The Board noted that there are numerous active ongoing programs in the State of Washington dealing with areas of federal practice in a comprehensive fashion.

Availability of More Trial Practice Courses

The Board supports this concept; however, it recognizes the financial burdens that creation of such programs impose on already strained law school budgets.

National Standing Committee of the Judicial Conference to Oversee National Standards

The concept of establishing this committee is opposed by the Board, but the concept of continuing to examine the quality of trial advocacy in all courts of this country is one that merits support.

ABA Code of Professional Responsibility

There was some concern expressed about the revision of the Code if that revision in any way would further hinder the ability of an individual to be admitted to practice in the federal courts. It was felt, however, that steps should be undertaken to better define "competency" and to set guidelines regarding trial advocacy standards.

Conclusion

The conclusion of the Board of Governors is that although there may be some inadequate performances in the federal courts in Washington, their frequency is small and apparently not correctable. Accordingly, there is no justification for altering the current rules for admission to practice in the federal courts in this state.

TABLE 1.

Opinions regarding "experience" requirement as precondition to practice in Federal Courts.

	CIVIL CASES			CRIMINAL CASES		
	Yes	No	Total	Yes	No	Total
Precondition to admission?	46.7%	53.3%	100.0%	54.4%	45.6%	100.0%
If yes, should "grandfathering" be allowed?	46.8%	53.2%	100.0%	40.9%	59.1%	100.0%
Precondition to unsupervised conduct of a trial?	57.9%	42.1%	100.0%	63.6%	36.4%	100.0%
If yes, should "grandfathering" be allowed?	41.6%	58.4%	100.0%	36.1%	63.9%	100.0%

TABLE 2.

Opinions regarding Performance Review Committees

In favor of establishing such committees	47.3%
Opposed to establishing such committees	52.7%
	100.0%
Assuming such committees are established:	
In favor of lay representation	23.1%
Opposed to lay representation	76.9%
	100.0%

TABLE 3.

Opinion regarding examination in Federal practice subjects as precondition to admission to Federal Court.

In favor of examination	43.2%
Opposed to such examination	56.8%
	100.0%

NOTE: In a great number of the questionnaires, the respondent commented that admission to one federal court should entitle a lawyer to practice in any federal court.

TABLE 4.

Inadequate representation encountered in trial by opposing counsel

	YES	NO	TOTAL
Encountered inadequate representation in Federal Court?	21.5%	78.5%	100.0%
Encountered inadequate representation in State/District Court?	63.4%	36.5%	100.0%

TABLE 5.

Percentage of cases reaching trial in which inadequate representation by opposing counsel encountered.[1]

	Federal Court	State/District Court
1-10%	71.6	59.3
11-20%	14.4	24.1
21-30%	8.2	8.0
31-40%	1.0	3.5
41-50%	3.1	3.5
51-60%	0	.8
61-70%	0	.3
71-80%	0	.2
81-100%	1.5	.3
	98.8%[2]	100.0%

[1] Question assumes respondent has encountered inadequate representation.

[2] Not 100% due to rounding and/or keypunch error.

TABLE 6.

Primary perceived reasons for inadequate representation.[1]

	FEDERAL COURT			STATE/DISTRICT COURT		
	Primary Reason	**Second Reason**	**Third Reason**	**Primary Reason**	**Second Reason**	**Third Reason**
Poor planning and management of litigation	51.3%	14.5%	14.2%	51.3%	13.7%	13.8%
Lack of forensic ability	4.6%	7.1%	8.6%	4.7%	10.0%	10.4%
Inadequate grasp of facts of case	7.2%	21.6%	12.9%	9.9%	20.5%	15.0%
Conflicting interest present	—	.4%	—	.1%	.1%	1.1%
Poor knowledge of law of the case	9.1%	21.2%	16.8%	10.3%	20.1%	15.8%
Poor general legal knowledge	8.0%	7.5%	10.8%	7.6%	8.8%	10.4%
Poor knowledge of evidence	3.4%	11.4%	15.5%	5.0%	12.5%	15.0%
Poor knowledge of procedure	6.1%	11.0%	15.9%	2.9%	10.5%	12.7%
Other[2]	10.3%	5.5%	5.2%	8.0%	3.7%	5.7%
Total[3]	100.0%	100.2%	99.9%	99.8%	99.9%	99.9%

NOTE: There was a high non-response rate to this question that correlated to the number of respondents who had not encountered inadequate representation. The above results appear to be opinions of only those respondents who had encountered inadequate representation in trial in any court.

[1] Question assumes respondent has encountered inadequate representation.

[2] Most common "other" responses were "laziness" and "inadequate preparation".

[3] Not 100% due to rounding and/or keypunch error.

TABLE 7.

Three primary perceived solutions to reduce inadequate representation.[1]

	FEDERAL COURT			STATE/DISTRICT COURT		
	Primary Solution	**Second Solution**	**Third Solution**	**Primary Solution**	**Second Solution**	**Third Solution**
Increased utilization of grievance mechanisms	9.1%	7.7%	12.3%	8.0%	7.2%	12.4%
Expansion of CLE requirements	22.9%	22.4%	17.5%	23.2%	22.3%	18.2%
Monitoring by judges, lawyers or special panels	24.1%	22.4%	17.8%	24.9%	22.6%	16.7%
License renewal conditioned upon successful written examinations	2.1%	4.0%	5.5%	2.3%	4.8%	5.7%
"Experience" requirements	21.6%	27.6%	15.9%	19.4%	26.8%	17.8%
There is no solution	7.8%	5.2%	15.2%	9.4%	5.9%	16.1%
Other[2]	12.0%	10.2%	15.5%	12.4%	10.2%	12.4%
Total[3]	99.6%	99.5%	99.7%	99.6%	99.8%	99.3%

NOTE: As in Table 6, there was a high nonresponse rate correlating to the number of respondents who had not encountered inadequate representation. The above results appear to be opinions of only those respondents who had encountered inadequate representation in trial in any court.

[1] Question assumes respondent has encountered inadequate representation.

[2] Most common "other" responses were "no solution".

[3] Not 100% due to rounding and/or keypunch error.

The Board's Work

Board Seeks Integration of Bar by Court Rule

By **Jay V. White**

WAPATO POINT, April 20-21 — The Board of Governors has voted 8-2 to request the state Supreme Court to integrate Washington lawyers by court rule.

The Board approved a draft State Bar Integration Rule (SBIR) which will be sent to the Supreme Court for its consideration. It is expected that the Board will discuss the merits of the proposed rule, among other subjects, at a joint meeting with the Supreme Court scheduled for May 25.

If approved by the Supreme Court, the SBIR expressly would supresede all provisions of the State Bar Act — except RCW 2.48.180 which makes the unauthorized practice of law a misdemeanor—and all other "acts and parts of acts in conflict with or superseded" by the rule.

Since 1933, pursuant to the State Bar Act, the Washington State Bar Association has been integrated — meaning that membership in the bar association is a condition precedent to the right to practice law.

The consensus of the Board is that it would be preferable to have the bar subject to the control of the Supreme Court alone under its inherent power over the judicial branch of government, rather than continuing the present situation where the power to control the bar association is shared with the state Legislature.

Following court rule integration, any questions concerning the nature and scope of bar association powers and purposes, or related issues (such as whether there should be lay representation on the Board of Governors), presumably would be resolved ultimately by the Supreme Court independent of any legislative action.

In the 1930s and 1940s, there were several unsuccessful attempts to achieve integration by court rule. In 1976, the Board approved a draft court integration rule proposed by a committee chaired by former bar association President Richard H. Riddell, but a tie vote by the Board prevented the rule from being proposed to the Supreme Court. (*Bar News* 30:10:19)

The present proposal, based upon the rule approved by the Board in 1976 and incorporating the major provisions of the State Bar Act, was drafted by Board Member Bradley T. Jones. The motion to refer the rule to the Supreme Court was made by Board Member Paul R. Cressman and seconded by Board Member Michael J. Hemovich. (Hemovich was named by the Board in March to be the next president of the bar association.)

The dissenting Board members were Quinby R. Bingham and Lowell K. Halverson. Halverson appeared to support the idea of integration by court rule, but wanted the Board simply to propose that the Supreme Court consider such integration, rather than have the Board make a formal request for it. He questioned whether a "jury" (the Legislature) might be preferable to a "judge" (the Supreme Court) in resolving issues relating to the bar association.

Bingham took the view that "we should leave well enough alone." He characterized the bar association as "getting along fine now" with the state Legislature and maintained that there is insufficient evidence of any pressing need to supersede the State Bar Act by court rule.

OTHER BOARD ACTIONS...

■ **MEETING WITH COURT OF APPEALS** — The Board devoted its entire Saturday morning session to a joint meeting with 15 of this state's 16 Court of Appeals judges, and with Howard Primer who recently succeeded Phillip B. Winberry as Administrator for the Courts. Among matters discussed were the unpublished opinion procedure; the use of court commissioners; settlement conference procedures; and other efforts by the court to balance efficiency appropriately with the need for the just resolution of appeals in the face of an increasing caseload.

■ **LEGISLATIVE REPORT** — Legislative Representative William A. Gissberg reported on the present status of bills introduced into the Legislature which were sponsored, supported or opposed by the bar association through the Board of Governors. Of the 6 bar-sponsored bills, 4 have been enacted, one defeated, and one is still pending. Of bar-supported bills, 8 have been enacted, 5 defeated, and 5 are pending. Of bar-opposed bills, one was enacted, 18 were defeated, and one is pending. Legislation sponsored or supported by the bar which has been enacted includes comprehensive technical revisions in the corporate code; increases in jurisdictional amounts in controversy for district courts from the present $1,000 to $3,000 this year and $5,000 in 1981; an increase in the jurisdictional amount for small claims courts to $500; "local option" compulsory arbitration for superior court civil cases involving less than $10,000; elimination of certain statutory exemptions from jury service; an increase in court filing fees which support county law libraries; establishment of a minimum jurisdictional amount of $200 for civil claims brought to the court of appeals and elimination of the automatic right to appeal a less than unanimous decision by that court; a provision for the award of attorneys fees against reserve funds established by public works contracts; and provision for the filing of certificates of assumed name with the Department of Licensing. (Gissberg summarized positions taken by the Board as to legislative proposals in an article published in February, *Bar News*, 33:2:16.)

■ **JUDICIAL EVALUATION POLL**—The Board unanimously voted to continue for another year the practice of polling the membership to evaluate Superior Court judges. Results of the poll are confidential and made available only to the individual judges.

■ **PARA-LEGAL COMMITTEE** — The Board approved resolutions by the Para-Legal Committee to change its name to the Legal Assistants Committee (Bingham opposed), and to add two lay members to its ranks (Bingham, Danielson, Hemovich and Welts opposed).

■ **ETHICS OPINION** — The Board approved a formal opinion of the Code of Professional Responsibility which rescinds Formal Opinion No. 156 which had prohibited the donation of attorney services as an item to be auctioned at a charitable event. The Committee took the position that the rescission was appropriate in light of changes in CPR provisions against attorney advertising, 91 Wn. 2d 1102 (1978).

■ **PUBLIC INTEREST LAW FUND**—The Board deferred action on a request by the Unemployment Representation Clinic, Inc., of Seattle for an appropriation from the public interest law fund which was created by voluntary contributions by members of the bar in connection with the annual dues statements. The Board indicated that before taking action it would give notice in the *Bar News* to provide interested persons and groups an opportunity to apply for use of the approximately $600 in the fund earmarked for "public interest" purposes. □

Approved Continuing Legal Education Activities

COURSES APPROVED

GONZAGA UNIVERSITY SCHOOL OF LAW

Representing the Purchaser in the Sale of Defective Goods
May 7-10, 1979: Spokane 8.00

New Bankruptcy Act
June 1, 1979: Spokane 6.50

NATIONAL PRACTICE INSTITUTE

Demonstration of a Tax Fraud Case
May 4, 1979: Seattle 6.00

PRACTISING LAW INSTITUTE

Use of Trusts in Estate Planning
May 31-June 1, 1979: Seattle 12.00

8th Annual Institute on Equal Employment Opportunity Compliance
May 16-18, 1979: San Francisco 15.00

Evaluating Real Estate as an Investment & Tax Shelter
May 10-11, 1979: San Francisco 9.50

WASHINGTON STATE BAR ASSOCIATION

Representing the Close Corporation
May 4-6, 1979: Richland 12.00

Real Property, Probate & Trust Seminars
May 18-20, 1979: Wenatchee 12.50

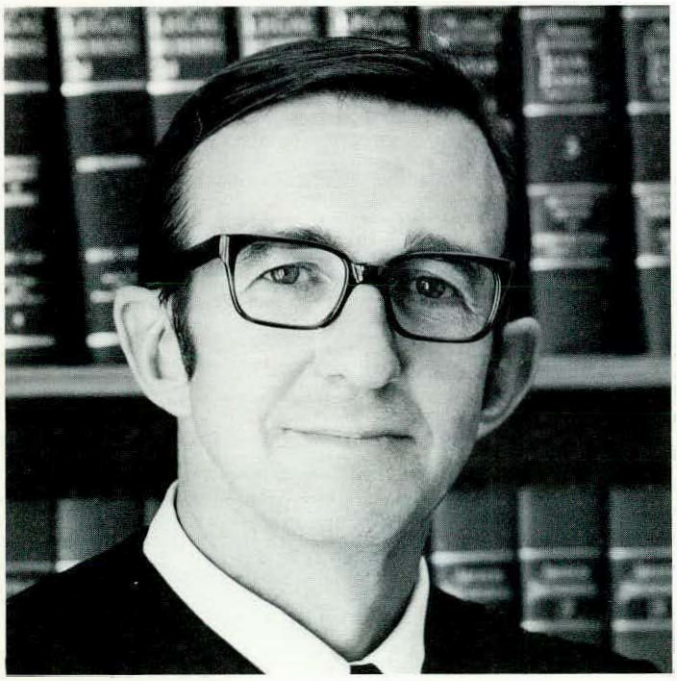
YAKIMA COUNTY BAR ASSOCIATION

Medical-Legal Seminar
May 2, 1979: Yakima 3.50

SUPERIOR COURT NEWS
By JUDGE JAMES A. NOE

Judge Del Cary Smith

Judges and lawyers throughout the State of Washington were saddened by the death of Spokane County Superior Court Judge **Del Cary Smith,** age 51, who



Judge Del Cary Smith

died in Spokane March 2, 1979, after a lengthy illness. Judge Smith was appointed to the bench by Governor Daniel J.Evans and assumed his judicial duties on August 22, 1972. He was a graduate of Stanford and received his law degree from Gonzaga Law School in June 1953. His thoughtful contributions to the judiciary and his affable presence will be missed.

Superior Court Coordinator Appointed

Ms. **Louise Anderson** has been employed as a coordinator for the Washington State Superior Court Judges Association. Ms. Anderson was selected out of a group of fifty applicants for the new position. She is a graduate of the Judicial Administration College in Denver and will be a technical employee of the Administrator for the Courts in Olympia, but fully deployed by the Superior Court Judges. She will provide staff services for the Association.

Judges Meet New Administrator for the Courts

Howard Primer, new Administrator for the Courts, has spent his first few weeks on the job meeting with the judges of the state of Washington. He has advised judges that he desires his office to be of service to judges at all levels and, where appropriate, he plans to be involved assisting the judiciary with important areas of concern such as legislation, bench/bar/press relations, and staff services. Mr. Primer brings a good deal of experience and enthusiasm to his new role. Most recently, he has served as Staff Director for the Appellate Judges Conference of the ABA Judicial Administration Division. □

CRIMINAL LAW SECTION

By **CARL MAXEY**

This Section has instituted a newsletter entitled Criminal Law in Brief, available to members of the Section. The publication is prepared by the Seattle-King County Public Defender Association and is to be published periodically by that Association and the Criminal Law Section of the State Bar.

The first issue was mailed out in early January 1979 and it is contemplated that there will be an issue about every three months.

The lead article outlines the activities and availability of the Appellate Defender Project, a division of the Seattle-King County Public Defender Association. The rest of this 7 page document outlines a series of cases pending decision, these dealing with issues of importance to those attorneys interested in the Criminal Law. Each case discussed is listed by title, defense attorney, prosecutor, any Amicus, date argued and the issue involved.

A publication of this nature should appeal to anyone having any criminal law work and is available to members of the Criminal Law Section as a service of this Section, the Section Committee, and the Seattle-King County Public Defender Association.

Additionally the Section Committee is working to assist in securing an increase in the compensation for appellate work, the present inadequate return being a serious problem to those involved.

This Section is cooperating with the State Bar and others in the preparation of a video-tape dealing with voir dire, a project now drawing to fruition.

Ideas are being solicited for a future CLE criminal law seminar by this section, this as to topics of the most interest to the most people.

YOUNG LAWYERS SECTION

Elections

The Young Lawyers Section of the Washington State Bar Association is governed by a Board of Trustees elected from among its membership. The Section will hold elections in June to elect successors to the trustees whose terms have expired. Positions will be open from King County at large and Pierce County.

Also up for election are the positions of Chairperson and Chairperson-Elect of the Young Lawyers Section.

If you are interested in the positions of Trustee or Chairperson or Chairperson-Elect, contact Jim Judson, 4200 Seattle-First National Bank Building, Seattle, Washington 98154, (206) 622-3150, before June 12, 1979. □

CODE OF PROFESSIONAL RESPONSIBILITY COMMITTEE

DRA 1.1(h) and DR 3-101(A)

Dear Mr. Friar:

The request contained in your letter of December 12, 1978, concerning a proposed opinion for the Code of Professional Responsibility dealing with the relationship between disbarred attorneys and attorneys in good standing, has been considered by the Court.

The Court has approved the opinion as written.

JOHN J. CHAMPAGNE
Clerk
Washington State Supreme Court
Olympia

Formal Opinion 171
An Attorney in Good Standing May Not Hire a Disbarred Attorney in Any Capacity

An opinion has been requested regarding the relationship between a disbarred attorney and attorneys authorized to practice law. The Code of Professional Responsibility does not specifically address this issue. The Code does prohibit a lawyer from aiding a nonlawyer in the unauthorized practice of law. DR 3-101(A). It further prohibits a lawyer from sharing legal fees with a nonlawyer if any of the activities of the partnership consist of the practice of law. DR 3-103.

The Discipline Rules for Attorneys do address the issue and provides as follows at DRA 1.1(h):

> An attorney at law may be subjected to the disciplinary sanctions or actions set forth in rule 1.2 for any of the following causes, hereinafter sometimes referred to as violations of the rules of professional conduct:
>
> . . . .
>
> (h) . . . [P]racticing law under any arrangement or understanding for division of fees or compensation of any kind with a disbarred . . . attorney. . .

This rule addresses how an attorney in good standing must act. Therefore, DRA 1.1(h) clearly prohibits an attorney in good standing from practicing law under any arrangement or understanding for division of fees or compensation of any kind with a disbarred attorney.

This clear prohibition against attorneys practicing law while compensating a disbarred attorney means that an attorney in good standing who hires a disbarred attorney in any capacity could be subject to discipline for a violation of the Discipline Rules for Attorneys. Therefore, attorneys should refrain from such conduct.□

Notice of Petition for Reinstatement of Egil Krogh, Jr.

A hearing before the Board of Governors will be conducted August 17, 1979 at 8:00 A.M., to consider the petition of Egil Krogh, Jr., 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.

Heavy Response to Avis Car Rental Discount; Advantages to Charge Card Option

According to Avis Rent A Car System, car rentals by Washington State Bar Association members have been substantial since the 28% discount plan has been in effect. Avis officials also point out that additional advantages may be obtained by using an Avis charge card, rather than the State Bar membership card with an Avis sticker affixed to it:

1) The bearer of an Avis charge card is automatically enrolled in the Wizard Number Club. Before his arrival at the Avis counter a rental agreement is pre-printed with his name, address, proper discount, and drivers license number. Further, the car size of his choice has been designated and will be waiting for him.

2) The individual and/or firm have their choice of one monthly statement Central Billing, Individual Direct Billing, Divisional or Cost Center Billing and numerous other arrangements.

3) The Avis charge card is all that is necessary to trigger the proper discount. No ID sticker will be needed at any of our automated locations.

If you are interested in obtaining Avis charge cards for yourself, your colleagues or your firm, contact Bruce A. Tallini, Northwest Regional Sales Manager, Avis Rent A Car System, Inc., Suite 602 — 400 Building, 400 - 108th Avenue, N.E., Bellevue WA 98004.

Trial Practice Seminar Scheduled for June

Attorneys wishing to improve their trial preparation and presentation skills are invited to participate in the "Pacific Northwest College of Trial Advocacy" on the University of Puget Sound campus June 1-9.

Co-sponsored by the office of continuing legal education at the UPS law school and the Washington State Trial Lawyers Association, the nine-day program of intensive lectures and workshops will be lead by 35 trial attorneys, judges and law professors.

In addition to small class sessions, lectures and demonstrations of all major phases of trial practice skills and strategies will be presented.

Participants will have the opportunity to measure their progress on the basis of class critiques and videotape review of their individual presentations.

The program, which has been approved for continuing legal education credit, is limited to 120 participants.

For further information about registration and fees, please contact the continuing legal education office at the UPS law school (206) 756-3439).

Summer Lecturer Positions Open at UW Law School

The University of Washington Law School invites applications for two half-time Lecturer positions during summer quarter 1979. The Lecturers will jointly teach an intensive, 6-week course on the "Perspectives on the Criminal Justice Process" from mid-June to the end of July. The aim is to introduce 12 second year law students, enrolled in the School's Criminal Justice Program, to the practice and administration of criminal law. By a combination of participant observation and classroom analysis, the course attempts to provide an overview of the operation of the various stages of the criminal process. The qualifications for the positions include three or more years of criminal law practice, a strong academic and/or professional record, and a commitment to an interdisciplinary approach to legal education. Ideally, one of the Lecturers should have prosecutorial experience and the other defense experience. Please address applications (including resumes) and inquiries to Professor Wallace Loh, c/o Initial Appointments Committee, University of Washington Law School, Seattle, Washington, 98195. Telephone: (206) 543-7395.

Aviation Law Seminar

The Seventh Annual Aviation Law Seminar sponsored by the Seattle-King County Bar Association Aviation Law Section in collaboation with the Federal Aeronautics Administration will be held at Wapato Point resort on Lake Chelan on 28-30 September, 1979. Interested attorneys should mark these dates on their calendars. Details on the program will be published in future editions of the *Bulletin* and a brochure will be mailed to the bar membership at a later date.

Spokane Law Firm First in Nation to Underwrite Television Series

The Law Firm of Richter, Wimberley & Ericson, P.S., has underwritten the local broadcast of the program CONSUMER SURVIVAL KIT. They became the first law firm in the United States to underwrite a regularly scheduled national television program.

According to Don Ericson, "The Firm wanted to use the media of television to provide a service to the public. We think the program will help people learn how to help themselves and to know when to seek legal advice. The information presented by CONSUMER SURVIVAL KIT will help the viewer to cope with day to day consumer problems.

Last year, for the second year in a row, the American Bar Association honored CSK with its prestigious Silver Gavel Award. Also, in an unprecedented act, the Internal Revenue Service recognized the series for the second year in a row for its exceptionally lucid explanation of Federal tax laws.

Programs in the 1979 schedule will tackle dozens of consumer concerns, including food buying and fast-food restaurants, appliance repairs, paying for a college education, medical malpractice, estate planning, prescription drugs, home buying, auto accessories, weight control, and borrowing money.

Members of the law firm of Richter, Wimberley & Ericson are shown presenting a check to underwrite CONSUMER SURVIVAL KIT *on KSPS-TV, Spokane. Richter, Wimberley & Ericson was the first law firm in the United States to underwrite a regularly scheduled television program. The sponsorship began in January.*

Pictured are: Front Row (L to R) Don Ericson, Walt Schaar, KSPS General Manager; Tom Axtell, KSPS Development Director; Second Row: Bill Davis, Chuck Niblock, Bill Wimberley, Don Hanbaugh, Dave Grant. Third Row: Paul Richter, John Krall, Gary Guiney, Gary Bloom.

Additional Savings from Avis

Under our existing agreement with Avis Rent A Car, members of the Washington State Bar Association are entitled to a substantial price reduction when they purchase a used car from Avis.

When you visit an Avis "Yearling" lot in Seattle, Bellevue or Spokane, establish a price with the dealer and then present your Washington State Bar Association/Avis identification. The negotiated price will be immediately reduced by $200. This is another feature of our Avis agreement that means real savings for our members. The offer expires September 30, 1979.

If you would like more information regarding Avis "Yearlings" and the $200 discount, call: Gerry Guertin at (206) 622-1000 in Seattle, Vicki Rivet at (206) 455-1535 in Bellevue, or John Monakey at (509) 924-7676 in Spokane.

There have been some questions concerning the Avis discount structure. The formula is as follows:

(1) All Avis normal time and mileage rates are discounted by 28%.

(2) Avis special unlimited mileage rates (except the super saver) are discounted by 20%.

(3) International Avis rentals will be discounted by 20%.

(4) Rates in Alaska and Hawaii will be discounted by 10%.

(5) You must present your Washington State Bar Association identification sticker when you rent.

UW Sponsors 3rd Annual "Interdisciplinary Seminar In Criminal Law"

The third annual Interdisciplinary Seminar in Criminal Law sponsored by the University of Washington Law

School will be held on Saturday, June 23, 1979. The program this year focuses on four areas from the joint perspectives of scholarly inquiry, policy analysis, and professional practice: (1) judicial perspectives on sentencing, (2) ethics, strategies, and reform of plea bargaining, (3) constitutional criminal procedure, and (4) interdisciplinary applications to criminal law practice and reform.

Seminar lecturers are professors of law and of social science at the University of Washington and the University of Colorado, and federal judge Marvin Frankel. Panelists include well-known judges, prosecutors, and defense attorneys from the Washington bar.

The Seminar offers 6.5 CLE credits; registration fee is $40. For more information, please contact: CLE Director, U.W. Law School, Seattle 98195, (206) 543-8707.

The University of Washington School of Law and the Washington Law School Foundation, in collaboration with the Washington Criminal Justice Training Commission,

Present

THE THIRD ANNUAL INTERDISCIPLINARY SEMINAR IN CRIMINAL LAW

Saturday, June 23, Condon Hall

- This seminar is designed both for criminal law practitioners and for attorneys who, though not principally engaged in this practice specialty, still have a continuing interest in issues of criminal justice.
- The program this year includes the following areas: **Constitutional Criminal Procedure, Sentencing and Plea Negotiation, Rape Prosecution, and Trial Advocacy.**

Registration Fee: $40; includes course materials and refreshments. An optional box lunch may be purchased for $3.00 by advanced order.

Registration capacity is limited; pre-registration by mail is strongly recommended.

For further information: Francia Luessen, Director of Continuing Legal Education, 338 Condon Hall, University of Washington, JB-20, Seattle, WA 98105, (206) 543-8707.

APPROVED FOR 6.75 CLE CREDITS

In Memoriam

Richard G. McBroom, 70, of Spokane, died March 14. He was admitted to the Bar in 1937.

Judge Del Cary Smith, Jr., 51, of Spokane, died March 2. He was admitted to the Bar in 1953.

BENTON-FRANKLIN REPORT

By **STEPHEN T. OSBORNE**

The following individuals were admitted to the bar in ceremonies at the Franklin County Court House. **Jan Armstrong,** U.W., and **Greg Lawless,** son of the late Honorable James J. Lawless, Superior Court Judge. Jan and Greg have set up shop in Richland. **Christine Harwell,** Emory Law School, has joined Battelle Northwest and **Jonathan Scott Timmons** has joined the Franklin County Prosecutors Office. Also sworn in were **Elizabeth Mathews,** Temple and **John Herrig,** Pepperdine.

Jerry Roach joins brother **Pat Roach** at Campbell, Johnston and Roach in Pasco. Said firm is building a new office. We are all looking forward to the office warming.

Byron Shaw, formerly with **Bill Reinig** in Kennewick opted for the big city lights in Richland and joined Gladstone and Stanick. **Allen Brecke** joined the firm of Raekes, Rettig & Osborne in Kennewick.

There is a full calendar of activities for the coming summer including a softball team which will be headed by **Al** (Bluto) **Mouncer, Mike** (Homeplate) **Johnston** and **Jim** (Popeye or Popout) **Egan.** The team is dedicated to the proposition that "its not who wins or loses, but whose turn it is to bring the beer." The annual fishing trip and golf tournament are also on tap, so to speak. No doubt you will hear more about that than you want to later.

Finally, this reporter would be remiss if due recognition were not given **Bob Fischer** of the Seattle Bar who was on the winning Pro-Am Team at the Rainier Bank Cup at Snoqualmie Summit March 3, 1979. Bob teamed with 3 other Amateurs, including yours truly, and Former Olympic Bronze Medal Winner **Werner Mattle,** in beating 25 other teams to the bottom. The proud winners each won a pair of K2 skis of their choice.

Notices

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Douglass A. North, formerly Clerk to Judge Keith M. Callow of the Washington State Court of Appeals, announces his availability for referral, consultation, or association on appellate arguments and briefs.

Douglass A. North, Esq.
Hennings, Maltman, Weber & Reed
414 Central Building
Seattle, Washington 98104
Telephone: (206) 624-6271

John O. Durkan announces his availability to assist lawyers to guide clients through civil or fraud tax audits, to negotiate settlements or to prepare and try federal tax cases before the U.S. District Court or the U.S. Tax Court.

Mr. Durkan served seventeen years with the IRS as corporate auditor, review and trial attorney and as Assistant Appellate Counsel of the Seattle District. Member of Washington and Montana Bars.

John O. Durkan, Esq.
155 N.E. 100th, Suite 403
Seattle, Washington 98125
Telephone (206) 523-5783

Ronald D. Flansburg of the Washington State Bar announces his availability for appellate consultation or association in matters of notices, motions, evaluation and development of appellate arguments and briefs or client referrals.
CONTACT:

Ronald D. Flansburg, Esq.
P.O. Box 7625
Olympia, Washington 98507
Telephone (206) 943-8888

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.
Latest booklet and information about U.S. Immigration Laws sent upon request without charge.

Dan P. Danilov, Esq.
3828 Seattle First National Bank Bldg.
Seattle, Washington 98154
Telephone (206) 624-1580

Michael Lantz of the Washington State Bar announces his availability to lawyers for consultations and referrals in Federal Tax cases pertaining to civil or fraud tax audits and to prepare and try tax cases before the U.S. Tax Court or U.S. District Court. He also is available to assist in Business, Corporate, and Estate tax planning.

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For Sale: Lawyers Edition Supreme Court Reports, complete, and Washington Reports, Vol. 101-200. Excellent condition. Part of an estate. Make offer. Contact Martin & Marquis, 1016 Larson Bldg., Yakima, WA 98901.

For Sale: Washington Digest, current through 1978. $75. Contact D. McCain (206) 885-5000.

For Sale: Complete set CJS, good condition, 101 volumes with supplements, $500 or best offer. (206) 624-7990

For Sale: Massive attorney's desk, matching credenza, desk chair, and three client's chairs. Top quality. Excellent condition. Bill Roberts, in Olympia, (206) 753-6823; after six, (206) 754-7670.

For Sale: Full set Washington Practice. Best Offer. Call (206) 246-8772.

Kirkland Area: Wanted, attorney to share office space at law offices of Robert W. Villareale in Kirkland; full use of law library and secretary. Call (206) 827-5653.

Prime Office Space Available: In deluxe Pioneer Building Suite for 1 attorney. All services and amenities available. Terms negotiable. Call (206) 623-7007.

Wanted: Two-man southwest Washington firm looking for an associate. Two or three years general practice experience preferred. Please submit resume to P.O. Box 1846, Longview, WA 98632.

Securities Examiner 1: Salary $16,152 - $20,616. Immediate opening with the Washington State Department of Licensing in Olympia. Assists in the registration and enforcement activities of the Washington State Securities Division including the development of recommendations on the exercise of the Division's quasi-judicial authority in granting or denying applications for the sale of securities, franchises, or camp clubs to Washington investors. Requires graduation from an accredited law school and membership in the Washington State Bar Association. State civil service with full employee benefits. Contact G.M. Meyer, Personnel Manager or George Zulauf, Asst. Personnel Officer, Department of Licensing, Highways Licenses Building, Olympia, Washington 98504. Telephone (206) 753-2478. An equal opportunity employer.

Position Available: Growing marine oriented corporation with diversified marine and manufacturing activities, domestic and international, requires corporate legal officer to be involved in wide spectrum of legal/management functions including contracts, license agreements, patent matters, labor, insurance, etc. He will handle many of these items directly, utilizing general and special legal counsel as required. Ideal candidate will have a minimum of five years experience and be desirous of making a career in industry. Contact Hank Schlapp, MARCO, 2300 W. Commodore Way, Seattle, Washington 98199. (206) 285-3200.

Position Available: Ground floor opportunity for specialist in employee benefit plan law to join expanding Seattle firm. Experience required in all phases of this limited area of practice; the Internal Revenue Code and ERISA in particular. Financial arrangements negotiable. Respond to Box 19, WSBA.

Position Available: Thriving two man Bellevue Firm seeks partner with at least seven (7) years experience, preferably in tax, securities and real estate. Box 9, WSBA.

Research Assistance: Stanford Law graduate, with judicial clerkship and experience in practice, available for research and other assignment. Member Washington Bar. Write P.O. Box 1082, Wauna, WA 98395.

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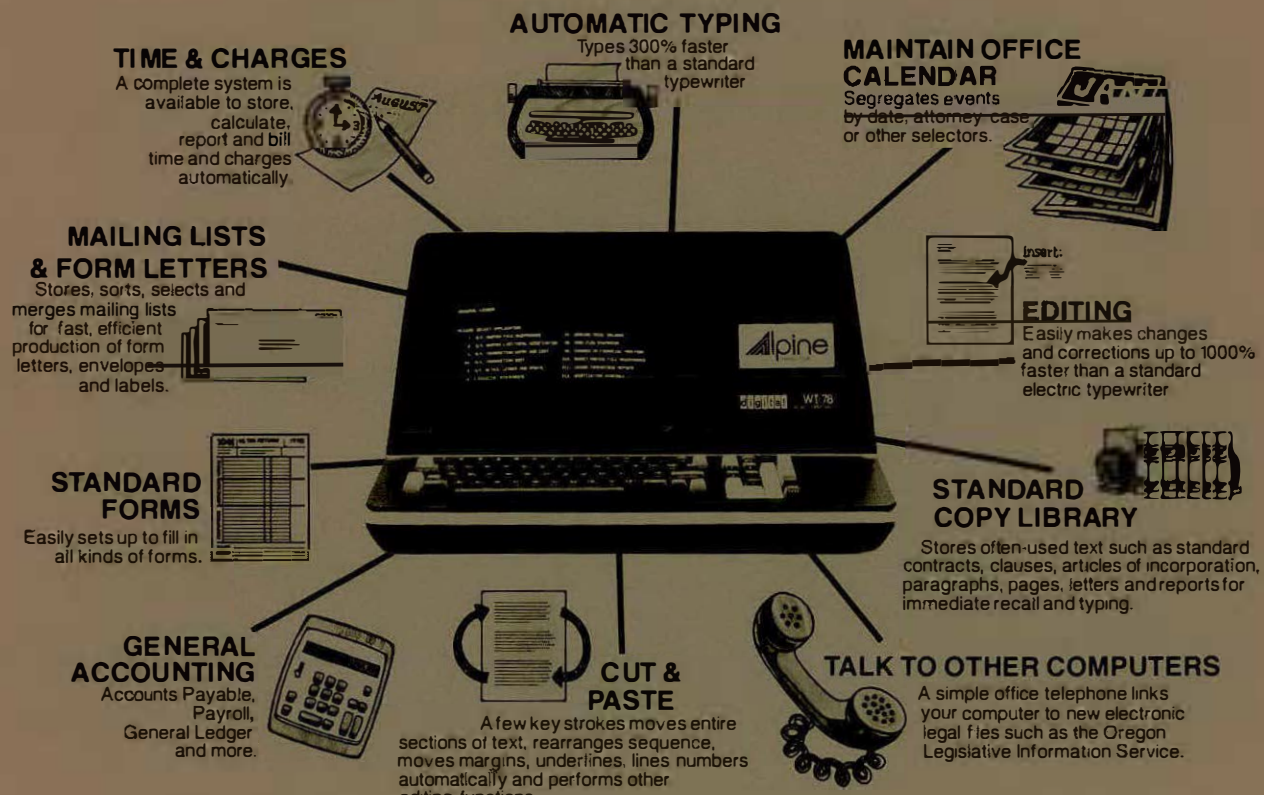

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