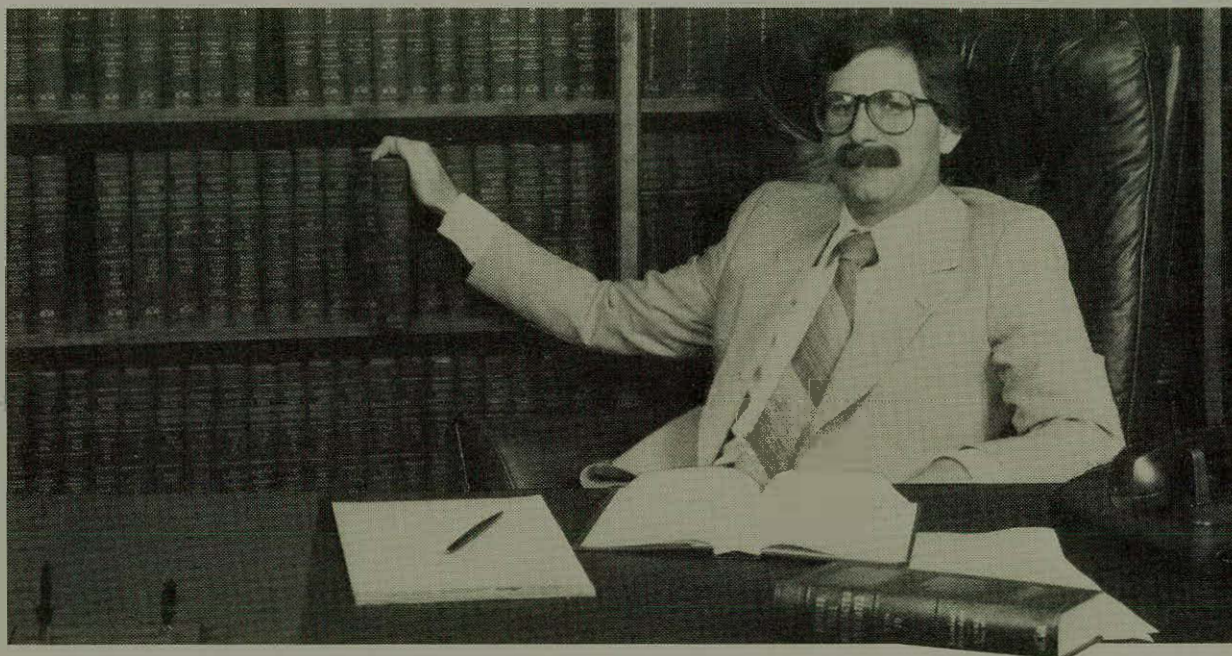


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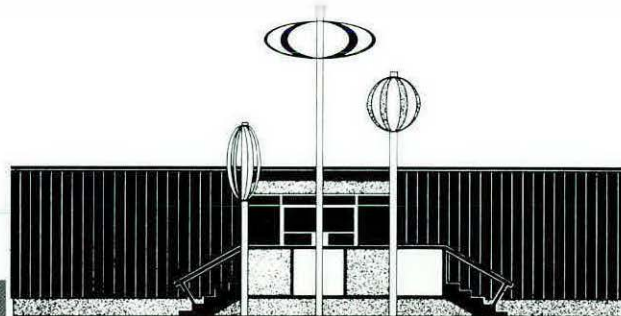
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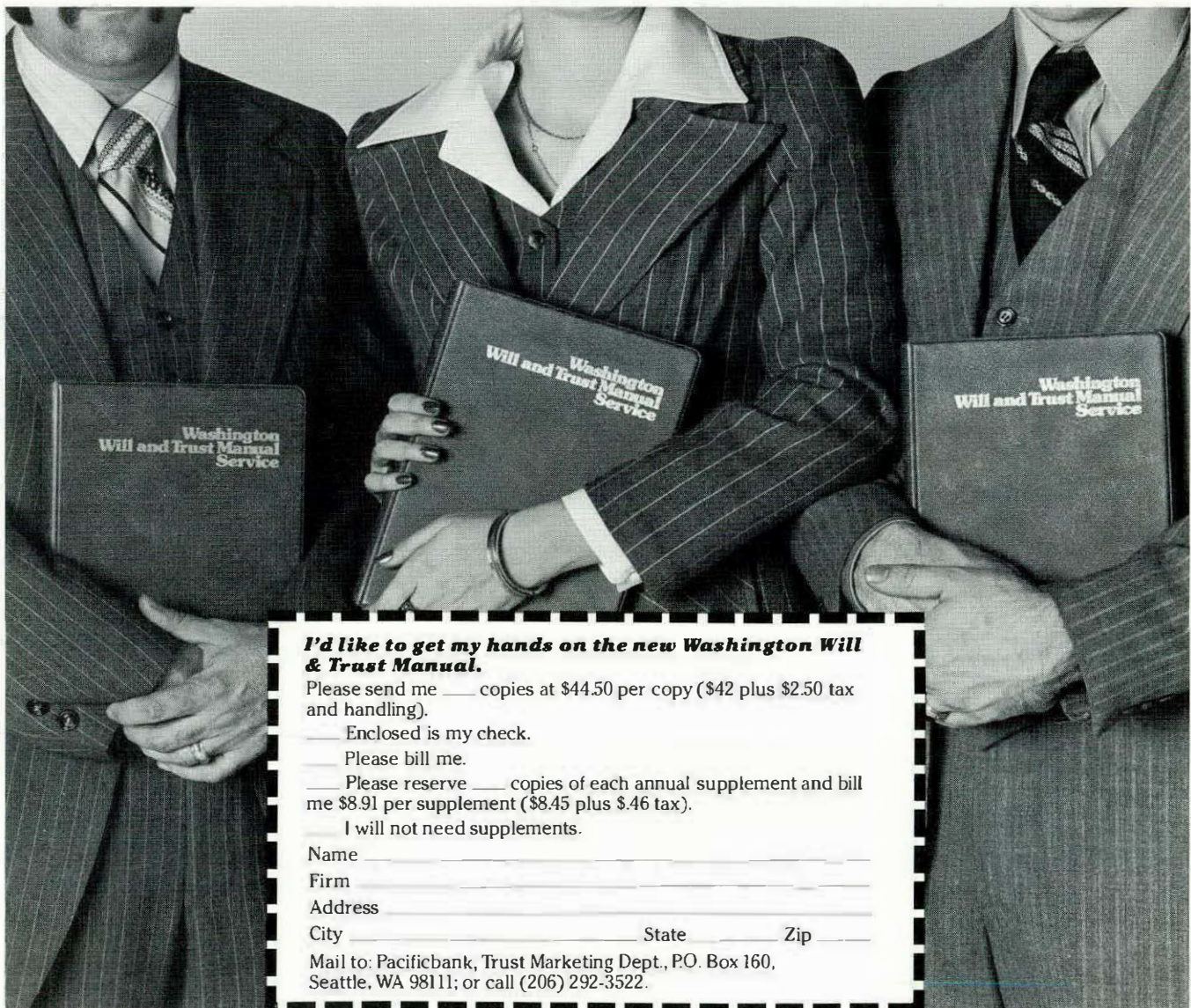
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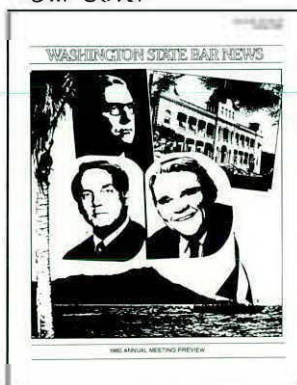
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**New Bar Association Direct Line Telephone
Numbers Are Now In Service See Page 5.**

Our Cover



This month's cover, by John McCarty, features the headline speakers for the 1980 State Bar Annual Meeting. They include, clockwise from upper left, Hon. Samuel P. King, Chief Judge, U.S. District Court, Honolulu, Andy Rooney, CBS News, and Washington State Supreme Court Chief Justice Robert F. Utter.



Questions on Voir Dire Not Always as They Appear

Editor:

I've read Judge Winsor's article on jury selection which I believe merits commenting upon [*Bar News* 34:7:23]. I agree with many of the things Judge Winsor says; however, in general my disagreement with judges on the subject of jury selection stems from their failure sometimes to recognize the enormous amount of insight we have gained from psychologists and behavioral scientists on the subject of communication. Frequently, questions which might otherwise appear not to be addressing the function of voir dire are, in fact, very significant. Perhaps a pre-trial conference with the court to explain the reason for certain questions would be appropriate, but one should not judge whether or not a question is designed to elicit significant information on jury bias merely from the words employed in their ordinary context.

PAUL N. LUVERA, JR.

Mount Vernon

Questions About Written Fee Agreements

Editor:

As a small town practitioner, I am puzzled by the simplistic approach

requiring fee agreements in writing for all matters. It appears that the drafters of this document do not comprehend the kind of practice that most of the thousands of small town practitioners engage in. I have a few questions as to the application of the new rules.

1. When must the written fee arrangement be entered into?
2. What about the regular clients for whom a myriad of matters is undertaken?
3. Are we going to become like a supermarket with a variety of statements to be executed by

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"If you bear with me. Your Honor. I can explain why I called this witness."

the client, or, will we have to take a substantial amount of time in each case to analyze the fee beforehand and tailor each fee to each case?

4. What about the very simple matters such as codicils, chang-

ing an executor, or power of attorney?

I see another layering of our bureaucracy arising out of this particular fee arrangement. The fee arbitration panels will then have written documents on which they can super-vise the attorneys' fees up front, and

the next step will be for all written documents to be sent to the fee arbitration panel before we can secure our fee. Before that they will be paid 10% of the fee. (This paragraph was written in jest. However, the more I look at it, the more I am not so certain it might not happen).

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If You Ask Me...

Criticism and Comment Is Provoked By Proposed Indigent Appeals Program

by C. C. Bridgewater, Jr.

[The following article is based upon a letter dated July 25, 1980 to Howard S. Primer the state's Administrator for the Courts, from the author; C. C. Bridgewater who is a Longview attorney and chairman of the bar association's Young Lawyers Section. Mr. Bridgewater's comments concerning a proposed pilot program to handle appeals by indigent criminal defendants were brought to the attention of the Board of Governors which requested the Court Administrator in August to defer the award of any contract to implement the indigent appeals program until after it has been studied by the Board and all in-

terested parties. The matter will be on the Board's agenda at its meeting in Spokane on October 17-18. The regular column, "The Board's Work", which is not published this month and also did not appear last month, will resume in the November issue and it will include a summary of the Board's action on this and other matters.

-Ed.]

It is an oddity that in the criminal justice system when indigents are represented, defense attorneys are the only persons whose services become less valuable — judges, prosecutors, clerks and reporters are not required to reduce their "fair" recompense. Rarely is any defense attorney for indigents fairly compensated either at the trial or the appellate state.

Now the Court Administrator has proposed a system for indigent representation at the appellate level. One firm or agency will be designated the Appellate Defender for Division 1;

and if the model works it will "go" Statewide.

My concerns are as follows:

1. That the approach of the delivery of legal services in this fashion may run into problems; practical, theoretical, and ethical.
2. That the current selection process (including the selection of this type of delivery system) is open to criticism from the Bar, the public and the indigent defendants.

These concerns will be discussed in detail.

I am assuming that serious thought has preceded this effort and that the rationale is that it is a more economic approach and that it will insure that quality appellate work is given. Surely, the independent appellate counsel could provide a "watchdog" for incompetent trial counsel and that the Appellate Court Judges might have more confidence in the citations or the compelling arguments of attorneys they see more frequently. How-

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ever, there may be significant drawbacks:

1. There is an implicit assumption that the representation will be as good or better than is now being given: this may not be true; there is an identification of the cause by the trial counsel which may not be present by an independent counsel who reviews many "cold" files for "significant issues".

2. There is an assumption that centralization is beneficial, but criminal issues are not narrow and there can be a benefit in drawing on a wide range of other types of representation to identify and suggest changes on public policy grounds. Centralization may inhibit this flow of inter-law impact.

3. Selection of the trial court errors may be done on the basis of reform issues—rather than on the case being based on its own merits with every identifiable error being cited to the court.

4. The necessary distance between counsel and Appellate Court Judge may not be sufficient to maintain the independence of the appellate counsel.

5. Defense counsel of accused indigents have necessarily become the quality control experts on the portion of the legal system which penalizes and imprisons persons. It is a fact that most criminal cases today concern "indigents" and that our rights as a society are being protected by the issues raised by counsel for the indigent and by having the courts rule on such issues. Most attorneys who undertake the defense of accused indigent felons believe that the system depends on the aggressive defense and on the testing of the limits of the constitutional rights. Aggressive defense is demanded and for a significant period of time, attorneys have suffered economic losses but weighed their economic

loss as significantly less than the loss of independence. If the proposal to centralize the delivery of appellate legal services is to reduce a number of issues litigated or to limit the number of cases which are presented, then such a system should be vigorously opposed. There are practical problems which must necessarily be worked out before such a system is even theoretically possible:

a. In every case should the report of proceedings be prepared?

b. Who will identify the appealable issues?

c. Who will contact the client throughout the appeal to determine if he or she desires an appeal on each issue?

d. How will the appellate counsel decide if trial counsel was pursuing trial strategy or being incompetent?

e. Will incompetency of coun-

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sel be raised without contacting trial counsel; and if trial counsel suggests that a "waiver of certain rights" was tactical rather than substantive, who will make the decision and how will it be documented for the Appellate Court?

f. If trial counsel pursues a theory from a foreign jurisdiction, e.g., instructions, constitutional protections, etc., is appellate counsel forced to continue the strategy and raise the issue, or can appellate counsel choose to forego review on those issues?

6. The current system has presented young attorneys with the opportunity to have appellate practice at an early stage in their career and to provide some funding for that experience; this will be diminished.

7. There is a balance to the bar and to the judiciary in providing training in defending accused at the appellate stage. This will be diminished and may prompt a lack of understanding of both the appellate functions and of the significance of criminal law issues just by limiting the number of attorneys who practice before the appellate courts. The plan would remove the incentive and the pride of the individual attorney of being able to follow through with "his or her" case to its conclusion and may provide an atmosphere more of "win at all costs" rather than enabling the trial counsel to see the ultimate fruits or poisons of his labor.

The selection process deserves some airing: neither the judicial counsel, the Washington Defenders Association, the Bar Association, the Criminal Law Section, the Legal Aid Committee, the Superior Court Judges Association, nor the Court of Appeals Judges were asked to evaluate such a delivery of legal system change. Surely before any such momentous move was made, one or

more of these organizations should have been asked to participate in such a policy-making decision. They should have been asked, if only for the reason that such a move is a dramatic change from the method of the delivery of legal services from the past. This has not been done! The change in the delivery system affects not only the Court of Appeals and the Supreme Court budget, but also affects a significant number of attorneys and all indigent accused. Before such a pilot project is inaugurated and whether or not it leads to a state-wide appellate public defender or three regional such offices, the concept itself should have been tested among those persons who participate at both the trial level and the appellate level. Further, the bidding process was opened to three or four persons or entities in King County. The process should have been opened state wide if the intent was to find the best "vendor" at the lowest price. There

are those in Tacoma, Vancouver, Spokane, who might be willing to change their location of practice in order to avail themselves of obtaining a client whose annual fee is \$500,000.00. Indeed, there are some who would give up their law practice as partners in law firms in order to avail themselves of such an opportunity (especially if in the offing was an opportunity to be the director of an organization which would encompass state-wide appellate practice). Thus, it is that the selection process, including the selection of the type of delivery system, appears to be one which may invite criticism rather than plaudits.

In summary, I am concerned over both the advisability of this type of delivery of legal services to the indigent and to the selection process of who shall provide the delivery system. I am interested in having the process reviewed by members of the Bar and the Judiciary before it is im-

posed upon the indigent and the system. I am in hopes that this will promote an open and frank discussion of the matters raised. □



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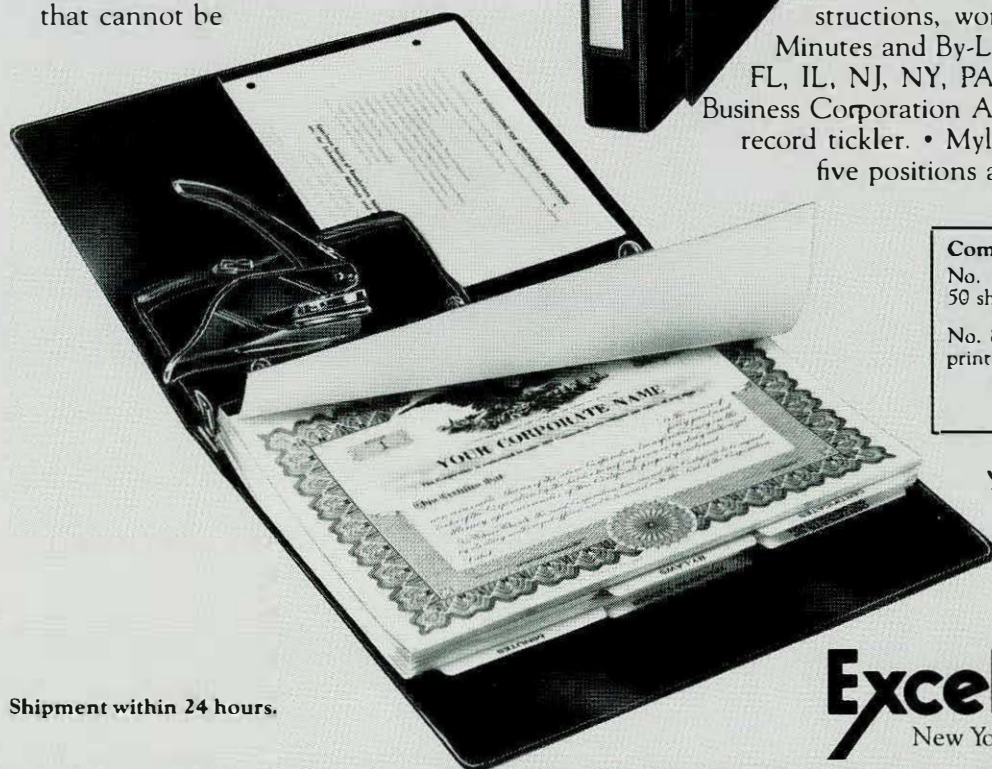
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A Lawyer Should Have Defended Her Honor

I never thought the day would come when I would quote Michael J. Hemovich as having said anything.

In the first place, anything which our bar association president tells you in person is so laced with Biblical references that it would be inappropriate to remember it on the printed page.

But I recently was reminded of Hemovich's first editorial for the *Bar News*, "The Time Has Come to Defend Our Judges", which appeared in The President's Corner last November.

I want to quote part of it:

"At the outset of our careers, we were cautioned that it was unethical to engage in false accusations against our fellow lawyers and surely we were reminded that it was our solemn duty and our oath to uphold the judicial branch of our government. This has not changed, although long ignored. We are still required as a matter of our professional responsibility to come to the aid of our judges when they have been wrongfully accused."

Hemovich concluded:

"I sincerely believe that we can wait no longer, that each of us must personally pledge that we will defend our judges from unjust and false attack, and that we will now begin to expound the virtues of our bench in every environment that we find ourselves."

"We must view our profession's lack of good image not solely as a great tragedy but as a lesson. We cannot sit idly by while our system is attacked and the image of justice is destroyed."

I do not interpret these remarks to mean that a lawyer should ignore shortcomings in the legal profession and in the judiciary. At the same time, however, I believe lawyers have a responsibility to speak out when our

legal and judicial system is unfairly attacked, and this is especially true when an individual judge is being taken to task by one who obviously does not understand the process and its constitutional roots.

I was reminded of Hemovich's editorial when I read an editorial in the *Seattle Times* on August 18 under the headline, "Judge's Unusual Tolerance of Irresponsible Behavior". The editorial writer complained that Seattle Municipal Court Judge Barbara T. Yanick showed "unusual and misplaced tolerance" in the trial of one of two off-duty Seattle police officers who allegedly fired their pistols in the air while under the influence of alcohol. Judge Yanick found the defendant guilty of "discharging a firearm in public" but not guilty of "menacing", a charge which requires proof beyond a reasonable doubt of the defendant's specific intent to put another person in fear of serious bodily injury or death. The editorialist noted that Judge Yanick said she believed the defendant to be too drunk to be intentionally threatening, and that she said the prosecution's case amounted only to "reckless endangerment", a charge which had not been filed.

Nevertheless, *The Seattle Times* offered this opinion:

"Judge Yanick's acceptance of intoxication as a defense for dangerously irresponsible behavior shows unusual and misplaced tolerance. Surely police officers can reasonably be expected to be aware of the possible tragic consequences of reckless gunplay.

"That is why many citizens will find it difficult to understand how Judge Yanick could conclude that such a deliberate act could be regarded as unintentional under any circumstances."

Judge's unusual tolerance of irresponsible behavior

TWO off-duty Seattle police officers willfully break the law and endanger the public while under the influence of alcohol and their only crime, according to the courts, is discharging a firearm in public.

That is a fairly minor offense under the city's criminal code.

On June 11, Officers Mark Boyce and Kerry Blount were seen firing their pistols in the air from a pickup truck near 22nd Avenue and Madison Street during what one of them would describe later as "eight minutes of hell-raising."

Blount initially was charged with an additional offense called "menacing," a more serious offense than discharging a firearm.

That was because an on-duty policewoman who witnessed part of the incident was prepared to testify there were people nearby when the last shot was fired. She said during Blount's trial she had seen one man drop to the ground, apparently to avoid being hit.

One can be convicted of menacing if there is a showing of intent to frighten and intimidate another.

Despite the policewoman's testimony, Municipal Court Judge Barbara Yanick ruled there was no proof the officer intended to cause any person to be in reasonable fear of death or serious injury. She said she believed they were too drunk to be intentionally threatening. (Both men testified they had consumed 10 to 12 alcoholic drinks in the two hours preceding the incident.)

Judge Yanick's acceptance of intoxication as a defense for dangerously irresponsible behavior shows unusual and misplaced tolerance. Surely police officers can reasonably be expected to be aware of the possible tragic consequences of reckless gunplay.

That is why many citizens will find it difficult to understand how Judge Yanick could conclude that such a deliberate act could be regarded as unintentional under any circumstances.

Judge Yanick, who set Blount's sentencing on the firearms conviction for September 17, said the city had not proved the menacing charge and that the prosecution case amounted only to "reckless endangerment," a charge that had not been filed.

The newspaper editorial certainly did not do anything to relieve citizens of their difficulty—which the editorial created—in understanding what Judge Yanick did. For openers, the editorial might have included a reminder that it is not the office of a newspaper editorial page to determine whether a criminal defendant is guilty or not guilty. It might have mumbled something about the necessity of proof beyond a reasonable doubt, and it might have mentioned that evidence of intoxication was not the sole basis for Judge Yanick's reasonable doubt.

Anyway, I was not one of the citizens finding all of this "difficult to understand", so I forgot about the editorial until August 29 when *The Seattle Times* published the following letter from Judge Yanick:

"I found your editorial... extremely irresponsible, unfair and seemingly intended to incite public reaction.

"I knew that my findings of not guilty in the case... would be unpopular in some areas. It would have



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been extremely easy for me to find him guilty of "irresponsible behavior," which is not a crime, or of reckless endangerment, a crime with which he was not charged.

"But he was charged with 'menacing.' Before making my finding, I stated that it should be remembered that the trial was not on the question of whether a police officer had behaved irresponsibly, improperly or outrageously, but on the question of whether a particular individual did or did not commit the specific crime of menacing.

"One cannot be convicted of menacing if there is only a *showing* of intent to frighten and intimidate another... It requires that there be proof beyond a reasonable doubt that the charged person took an action with the intent of putting another person in fear of imminent serious bodily injury or death. Were you aware of the fact that there was conflicting evidence as to which officer fired the

shot near the crowd of people? That no witnesses from the crowd of people at the scene appeared at trial to testify?

"Would you want a judge to find everybody guilty, whatever the charge, if the judge believed that person was guilty of 'something?' Would you want a judge to find someone guilty because his cause was unpopular or because he should have known better or just because it was easier for the judge? Should there be one standard of justice for accused police officers and a different one for all others? Surely you know that our system of justice mandates that everyone is presumed innocent until proven guilty of the specific charge against him BEYOND A REASONABLE DOUBT, not just on a 'showing.' It would be a sorry day for our system of justice if the judiciary were to ignore constitutional requirements for any reason.

"If you wish to editorialize about a

trial, it might be helpful to learn the facts and become familiar with the law first. If you wish to criticize a judge, please criticize a judge for what he or she can control. If a judge sentences unfairly or fails to provide due process in court, criticize the judge. But, please, have the integrity not to criticize a judge for that over which the judge has no control — the failure of the state or city to produce evidence to prove to the judge that beyond a reasonable doubt the person charged is guilty of the specific crime for which he was tried."

When I read Judge Yanick's letter, I wished I had written it. *Some* lawyer should have.

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The True Value of Lawyer/Legislators

Our Bar Association, this past year, has made an all-out effort to encourage lawyers to run for the State Legislature. Many of us have put our money where our mouth is — by participating in Bar-PAC and on an individual basis. Many lawyers have contributed their time as well as their money. As a result, we now have approximately 20 lawyers running for State offices in the General Election in November. I hope we will continue to respond.

In our zeal to encourage and help lawyers who are engaged in State politics, we should not overlook those who are participating on a national level. A review of almost all of the resolutions proposed by the various sections and committees of the American Bar Association revealed the direct relationship of such resolutions to pending legislation in the U.S. House and the U.S. Senate.

The House of Delegates of the A.B.A. acts similarly to our Board of Governors insofar as proposed legislation is concerned and either supports, opposes or takes no position. (The Delegates are about 400 in number and speak for about 286,000 members of the A.B.A.) These views are expressed at the appropriate time in Congress.

Someday these views may fall upon hostile ears — especially if we, as lawyers, fail to give our continued support to those of our brethren who are running for office on a national level.

The most common mistake that each of us makes is our tendency to forget the real importance of our Senators and Representatives and how their daily decisions affect our lives not only as citizens but as lawyers. The responsibility they have is almost inconceivable.

Many of us do not have occasion to come in contact with these men and women, ergo we regard them differently than we do those of the State level. It's unfortunate, because the location may be different but the problems, excepting foreign relations, national defense and the like, are similar.

We are oft times unmindful of the real concern these men and women have for the attitudes expressed by the Bar and for the ready willingness they have to assist us in every way.

A few weeks ago, as a result of our attendance at the Ninth Circuit Judicial Conference, we wrote each of our Senators and Representatives requesting their support of a bill to increase the per diem rates afforded federal judges. Their response was immediate and as a result of their efforts we are informed that the bill will pass.



Another example of the genuine concern for the administration of justice is the merit selection of federal judges. The selection process has been endorsed and followed wholeheartedly by both Senators Jackson and Magnuson. Further, responding to their own desires and that of the Bar, the Senate has passed and sent to the House a bill which includes in part a judicial conduct and disability section which provides for the investigation and resolution of complaints about federal judges.

Albeit the above examples are in the embryo, this is solid evidence that our Senators Jackson and Magnuson are extremely sympathetic to the wishes of the Bar.

The value of having lawyers as our Senators and Congressmen is immeasurable. There are so many difficulties in approaching people from other professions when one is a lawyer. Aside from the innate distrust, the difficulty in simple communication alone is sometimes insurmountable.

I can safely say that through the efforts of our legislative representatives, Bill Gissberg and John Fattorini, Eddie Friar and his staff, the Board of Governors, and many members of our Bar from various sections and committees, that our relationship and effectiveness at the State level is at an extreme high — but that is a hell of a lot of effort and money to expend on public relations and the like to establish our credibility so that we have some influence on legislation. This was all necessary because we did not foresee the consequences of the lack of lawyers in the legislature.

One of the most reassuring experiences I have had occurred in the past couples of weeks when I had the good fortune to be in the company of our Senators. It was august company for this old Ada County boy, but I can assure you that I was treated like an old friend — with



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such courtesy that it was difficult for me to respond.

The concern and respect that our Senators have for our Bar Association and its views was overwhelming. We discussed much pending legislation, its effect on our people and on our system of justice, the public lawyer and the private bar, the desires of certain federal agencies and their hopes and ambitions, some of the controversy that exists between our profession and government as such and many other matters. Suffice it to say there is a hell of a lot of dangerous legislation out there. It was very comforting to me to know that these men are lawyers — that their concerns were the concerns of all lawyers and that their conduct of the most important affairs are guarded by their innate fiduciary instincts to act for the common good. As lawyers and more importantly, as

citizens, our reliance and dependence on these men of the Senate and of the House is literally incredible.

Our failure to support these lawyers who are willing to accept this tremendous challenge may one day result in a disaster not unlike our Mountain. Quite frankly, our country just can't stand the loss of a good lawyer in the Senate or in the House. We ought to do our part in keeping them there.



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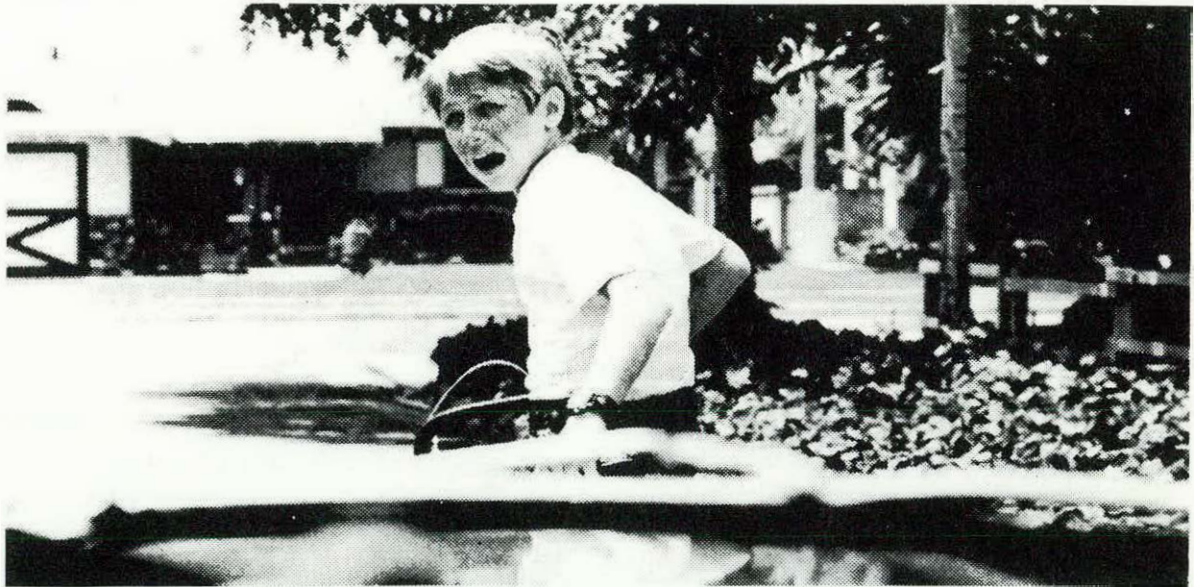
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We've put together a *great* meeting for you that combines valuable education sessions with a once-in-a-lifetime chance to experience this tropical paradise.

Seminaring at the Sheraton

You'll have a varied choice of nine in-depth CLE seminars to be offered during five enriching days. Scores of people have been involved in making this the best Annual Meeting CLE series ever. Your CLE Committee and twelve sections have scheduled many authoritative speakers, and the CLE credits to be offered in Hawaii total 36 credit hours. Whether you decide to take advantage of attending most of the programs or a selected few, all Annual Meeting registrants will take home with them, as always, the 1980 Annual Meeting CLE Handbook. (The 1980 volume of this valuable reference work totals 1,000 pages). For a full schedule of Annual Meeting CLE seminars, see page 25 in this issue.

Note: To assure that the founts of information flow when minds are the most receptive, all CLE seminars have been scheduled for the morning hours only. You can lie on the beach in the afternoons and ponder what you heard in the mornings.

Whatever seminars you choose to attend, you just can't buy a better bargain for the \$50 registration fee than the scope and quality of continuing legal education to be offered at the 1980 Annual Meeting.

A Meeting of Great Minds

The WSBA Annual Meetings have always offered a selection of stimulating and entertaining speakers, and this year is no exception. If you did not attend the "official beginning" of the 1980 Annual Meeting, at the

Annual Business Meeting of the State Bar held in Seattle on September 6, you missed your opportunity to hear one such speaker. Washington State Supreme Court **Chief Justice Robert F. Utter** delivered the annual "State of the State Courts" address at the Business Meeting. Chief Justice Utter has been a truly outstanding judge during his tenure at many levels in our state court system. His remarks contain much food for thought, and you'll find the full text beginning on page 33 of this issue.

Back at the beach. . . Annual Meeting Luncheons have become a traditional forum for erudite and witty speakers. You will be especially interested in the two men who will be with us this year.

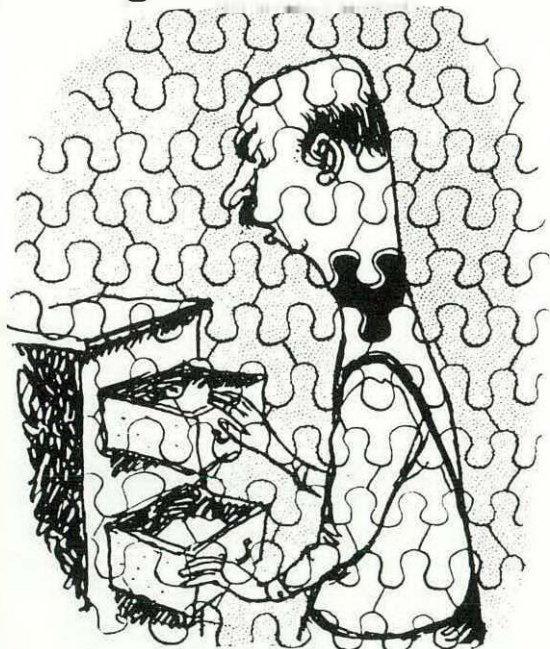
At the **Thursday Luncheon**, you will enjoy hearing the possessor of a brilliant legal mind in the person of the **Hon. Samuel P. King**, Chief Judge, United States District Court, District of Hawaii. Judge King has a distinguished legal career that spans 40 years and includes 24 years on the bench. He has served as a district magistrate for the Territory and State of Hawaii and as a Circuit Judge, in addition to being a U.S. District Court Judge. On the District Court Bench since 1972, he has been Chief Judge for the District of Hawaii since 1974.

Judge King's pre-bench legal career includes an outstanding record of service in private practice, in public service, and in professional associations. A graduate of Yale College and Yale Law School, he took his early schooling prior to World War II, in Hawaii. He served in the Navy in Hawaii during World War II, including duty as a Japanese language specialist. Your mind will be stimulated by this respected jurist, a man whose life experience has been truly Hawaiian and who has risen to the top of his profession.

At the **Friday Luncheon**, you may hear about the anatomy of a turnip, or why lawyers' briefs aren't brief enough, or why fuchsia is the ideal color for judges' robes. Whatever the topic, you will thoroughly enjoy the wit and candor of CBS News Writer-Producer and national television personality **Andy Rooney**.

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on CBS's "60 Minutes." That exposure is only a single facet of Rooney's amazingly prolific career as a writer.

Rooney's unique reports became a regular feature on "60 Minutes" in September 1978, and the National Academy of Television Arts and Sciences voted him an Emmy for these essays in 1979.

He left CBS for 18 months in 1970-72 for "The Great American Dream Machine" at NET and, later, ABC News. Since returning to CBS in 1972, Rooney has written and produced several broadcasts on various aspects of America and American life. These include "Mr. Rooney Goes to Work" (1977), which examined whether those on the job really work, or goof off; "Mr. Rooney Goes to Dinner" (1976), a look at the way Americans eat when they eat out; and "Mr. Rooney Goes to Washington" (1975), a visit into the labyrinth of government bureaucracy, for which he won a Peabody and an Ohio State Award. His other credits include CBS REPORTS: "The Colleges" (1974) and an essay, "In Praise of New York City" (1974). He also contributed film essays to CBS News coverage of the nation's Bicentennial Day celebration and to coverage of the Campaign '76 Democratic and Republican National Conventions.

Between 1962 and 1968, Rooney collaborated with CBS News Correspondent Harry Reasoner—Rooney writing and producing, Reasoner narrating—on such notable CBS News Specials as "A Birdseye View of America" (1964), "An Essay on Bridges" (1965), "An Essay on Hotels" (1966), "An Essay on Women" (1967), "Barry Goldwater's Arizona" (1967), "An Essay on Chairs" (1968) and "The Strange Case of the English Language" (1968). His "Essay on War" (1971) is in circulation at more than 600 colleges in the U.S. and abroad.

In 1965, Rooney wrote the script for the first Telstar transatlantic satellite broadcast, which was carried on all three networks and translated into 11 other languages.

In 1968, he co-produced and wrote two CBS News Specials in the series "Of Black America" — "Body and Soul" and "Black History: Lost, Stolen or Strayed." His script for "Black History: Lost, Stolen or Strayed," narrated by Bill Cosby, won a Writers Guild Award and an Emmy Award.

Rooney was also a writer for CBS News coverage of the 1960, 1964, and 1968 political conventions, as well as for ABC News, at the 1972 conventions.

His versatile writing career has also embraced radio, books, magazine articles and war correspondence. From 1959 to 1965, he wrote "The Garry Moore Show" on the CBS Radio Network. Earlier, he was Arthur Godfrey's radio and television writer, from 1949 to 1955, and he also wrote for Victor Borge, Herb Shriver, and Sam Levenson.

During that time, he also wrote extensively on public affairs for such CBS News programs as "The Twentieth

Century," "News of America," "Adventure," "Calendar" and "The Morning Show."

In addition to his work for CBS News, Rooney writes a column three days a week which appears in more than 90 newspapers, and he has contributed articles to Esquire, Life, Look, Reader's Digest, Harper's, Playboy, Saturday Review and other magazines.

He is the author of four books: "The Story of The Stars and Stripes," "Air Gunner," "Conqueror's Peace" and "The Fortunes of War." "The Story of The Stars and Stripes" was written after three years as a correspondent for The Stars and Stripes in the European Theater. In February 1943, as a Stars and Stripes reporter, he was one of eight correspondents who flew with the Eighth Air Force on the first American bombing raid on Germany. Another member of that select group was CBS News Correspondent Walter Cronkite, at that time a United Press correspondent.

Need we say more? Don't miss Andy Rooney at the Friday Luncheon!

Special Sessions for Super Spouses

The State Bar continues its tradition of fine Annual

Meeting spouses' programs in 1980 with *three* entertaining and appealing sessions. The first, to be held Wednesday morning, November 5, is the spectacular production, "**200 Years of Hawaii**," a living history of the only part of the United States which was once a Royal Kingdom. Internationally applauded narrator Richard Goodwin heads a superb cast. He tells the little known story of the drama, pathos, elegance and excitement of Hawaii's past 200 years. From peaceful isolation to discovery by Captain Cook, the rise and fall of the monarchy, revolution, annexation to the United States, and finally statehood. As the narration unfolds, the famous women of those eras — high chiefs, queens, governors — appear superbly gowned and jeweled as they were in life — an experience for the eye, the ear, the mind, and the heart — a rare glimpse of the real Hawaii, in priceless historic costumes, jewels and regalia.

There's more! On Thursday morning, November 6, there will be a **Pupu Cooking Demonstration and Decorating Instructions**. Those lucky enough to be in attendance will not only watch the making of the pupus but will actually participate in their making. Then everybody gets to eat the fantastic results. Also, during this program there will be instructions on using fruits and vegetables as decorations for every kind of social occasion. What's a "pupu," you ask? You'll have to attend the class to find out!



Waikiki Beach, site of the 1980 Washington State Bar Association 1980 Annual Meeting, November 3-9. (Hawaii photo courtesy of the Hawaii Visitors Bureau)

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And . . . On Friday morning, November 7, you'll get the chance to test your artistic skills and, if the flesh is willing, to "go native" for a little while with **Hula Dancing and Lei Making Classes**. This is strictly a "fun and entertainment" morning. Think you can get your nerve up for a little exercise? We'll have some morning refreshments to help you! Among those demonstrating for the hula class will be Seattle Mariner pitchers **Rick Honeycutt** and **Shane Rawley**. This should be a morning to remember and an unforgettable part of your visit to the islands.

Feeling a Little Racy? Want to Bend an Elbow or Do Some Swinging?

If you do, the 1980 Annual Meeting athletic events are for you. Once again we have scheduled the world famous **Washington State Bar Association Race Ipsa Loquitur (Diamond Head Division)**. Listen—This race is for you whether you have the condition of an Olympic boxer or if you move in six different directions when you walk. For runners, joggers or fast walkers, this year's classic will begin at the Kapiolani Park Bandstand (where the internationally famous Hawaiian Marathon begins) and will include runs along Diamond Head Road, Poni Moi Road plus Kilauea, Le Paio and Monsarrat. It will include an overall six mile course, with prizes and awards for a 2.3 mile course, a 3 mile course and the full 6 miles. The race will be run on Tuesday afternoon, November 4, and all registered runners will be picked up at the Sheraton Waikiki for transportation to the starting point. T-Shirts of appropriate design will be presented to each participant, refreshments (including cold fruit drinks, Gatorade, soda and candy bars) will be provided, and referees, guides and traffic monitors will be all along the route. To sign up (come on, you're not *really* afraid of wearing running shorts in front of everyone, are you?), just send in your registration form to the State Bar Office.

You say tennis is the name of your game? Then the **WSBA Hawaiian Invitational Tennis Tournament** is for you! To be played on the afternoons of Thursday and Friday, November 6 and 7, the Tennis Tournament package will include roundtrip air-conditioned motorcoach transportation, court fees, tennis pro fees (the pro will set up the draw, referee, oversee the Tournament and determine the winners), tennis favors (including Ridgeview sport socks for everyone), unlimited refreshments (including beer, soft drinks and cold fruit juice) and beautiful inscribed Hawaiian prizes. The cost per person for the entire Tournament is \$25.00. To assure the best possible draw for you, send your registration form and fee to the State Bar Office right away.

Golfers, you'll want to register for the **Washington State Bar Association Hawaiian Classic Golf Tournament**, to be held Wednesday and Thursday, November 5 and 6, at the Spectacular Makaha West Golf Course. Your reward at every turn will be a never-to-be-forgotten view of lush Hawaiian greenery against a panoramic backdrop of the beautiful blue Pacific Ocean. A \$50 fee includes roundtrip transportation, green fees for 18 holes, electric golf cart, box lunch, unlimited beer and soft drinks, Makaha bag tags with personalized labels, the 4% Hawaii state tax, and inscribed Hawaiian golf prizes. To register, send in your registration form and fee to the State Bar Office. Hurry . . . tee off times are filling fast.

Effervescent Events for a Terrific Time

When you've come all the way to Hawaii for an Annual Meeting, you don't think we'd limit the program to outstanding CLE sessions, celebrity speakers, great luncheons, super sports tournaments, and terrific spouses programs alone, do you?

Well, of course not! In addition . . . There will be three *spectacular* social events. On Tuesday evening, November 4, we'll lead off with a great **Election Night**

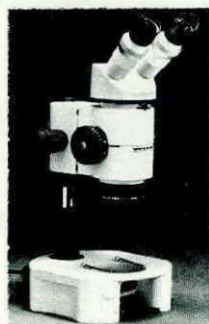
Jamboree No-Host Cocktail Party. We will have campaign posters, balloons and banners of all the candidates and will have election results being shown on the wide screen in the ballroom. With the time advantage, it should be just right for keeping up with what is going on in all the races around the country.

Thursday evening, we'll have a full scale traditional **Hawaiian Luau** with all the trimmings, including the food, music and ceremony which have made this unique event famous throughout the world. It will be an experience you will not forget.

Friday night you will be treated to what has become our own "world famous event," the gala **Friday Night Dinner, Dance and Show**. If you have experienced one in the past, you know that it will be the social highlight of the Annual Meeting. No effort is being spared to make it a grand and memorable experience for everyone.

Add in the special events, cocktail parties, breakfasts, reunions, and a myriad of other social times being planned by many different groups, and you get the idea of the variety of activities planned for the 1980 Annual Meeting. It's all being done with *you* in mind . . . Don't miss it. If you have not already registered, do it today. Send your registration form and fees directly to Group Travel Unlimited, and they will make all the arrangements.

See you in Hawaii!



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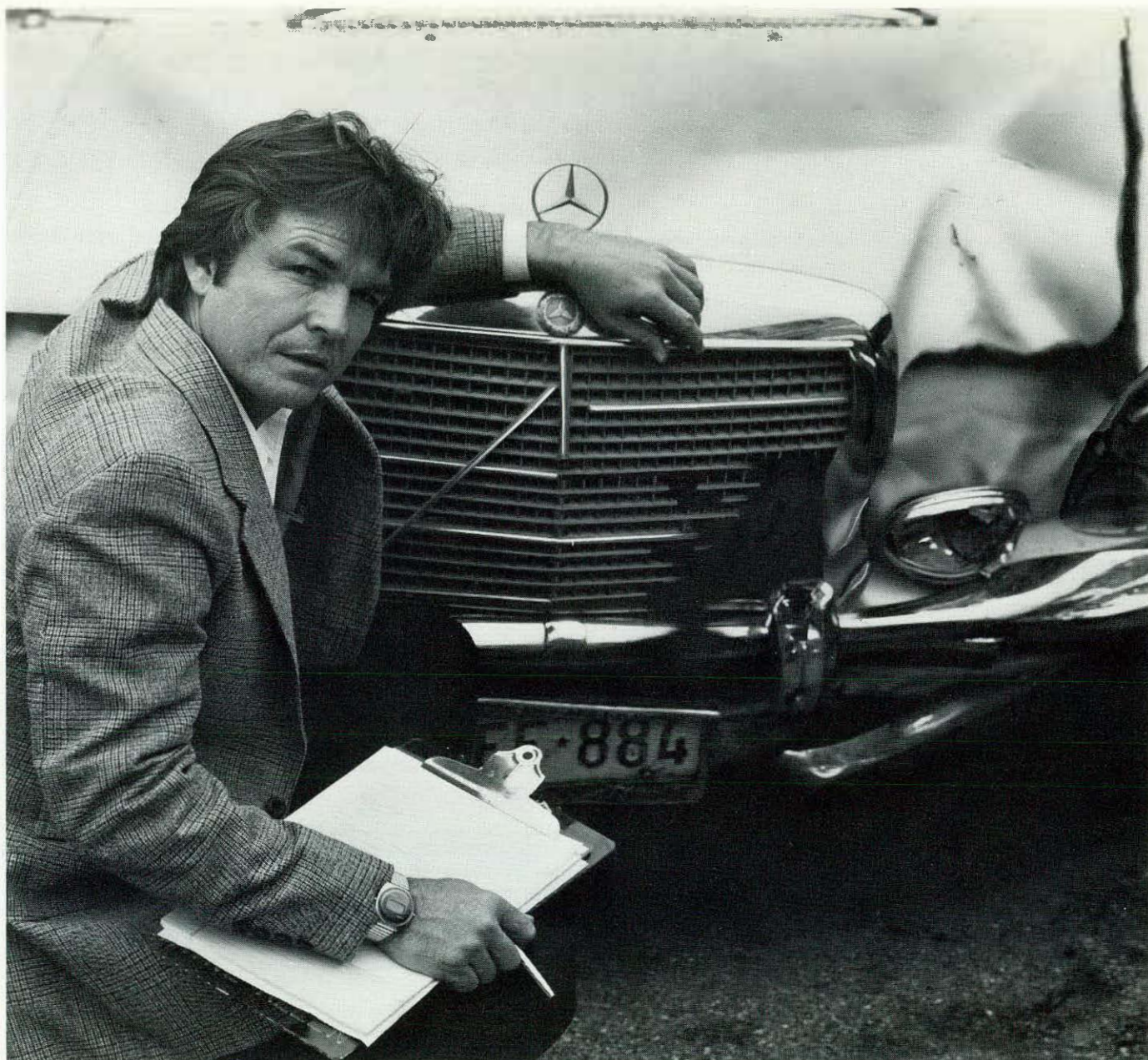
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1980 WSBA Convention

CLE Seminar Schedule

TUESDAY - NOVEMBER 4, 1980

8:00 A.M.-
12:00 NOON

I. TAX POTPOURRI

Sponsored by the Taxation Section - 4 CLE Credits

Seminar Chairperson:

Douglas G. Anderson - Weyerhaeuser Company, Tacoma

Subtopics/Speakers:

"Fringe Benefits and Employment Taxes"

Douglas G. Anderson - Weyerhaeuser Company, Tacoma

Brian L. Comstock - Roberts, Shefelman, Lawrence, Gay & Moch, Seattle

"When Can Washington State Tax Your Interstate Client? - The Due Process and Commerce Clause Restraints on State Taxation"

John T. Piper - Bogle & Gates, Seattle

D. Michael Young - Bogle & Gates, Seattle

"Tax Shelters Overview"

John R. Walsh, Jr. - Price, Waterhouse & Co., Seattle

II. TRIAL PRACTITIONER'S UPDATE AND REVIEW

Sponsored by the Trial Practice and Criminal Law Sections - 4 CLE Credits

8:00 A.M. -
10:00 A.M.

A. "TORT REFORM/PRODUCT LIABILITY: LEGISLATIVE REFORM OR RUINATION OF THE ADVERSARY SYSTEM?"

Chairperson & Moderator:

Charles A. Kimbrough - Karr, Tuttle, Koch, Campbell, Mawer & Morrow, Seattle

Panelists:

Ronald J. Bland - Levinson, Friedman, Vhugen, Duggan, Bland & Horowitz, Seattle

John Gavin - Gavin, Robinson, Kendrick, Redman & Mays, Yakima

10:00 A.M. -
12:00 NOON

B. "CRIMINAL LAW: RECENT DEVELOPMENTS & AREAS OF CONCERN"

Chairperson & Moderator:

Mark E. Vovos - Vovos & Voermans, Spokane

Subtopics/Speakers:

"Current Update on Criminal Law"

Joseph D. Mladinov - Deputy Prosecuting Attorney, Pierce County, Tacoma

"The New DWI Law & Trial Techniques"

Henry Templeman - Jordan, Brinster, Templeman & Ryan, Everett

"Recent Developments/Reforms in the Penal System"

Diane Oberquell - Chairman, Board of Prison Terms & Paroles, Olympia

WEDNESDAY - NOVEMBER 5, 1980

8:00 A.M. -
12:00 NOON

III. BUSINESS WORKOUTS & CURRENT DEVELOPMENTS IN CORPORATE LAW

Sponsored by the Corporation, Business & Banking Law Section - 4 CLE Credits

Seminar Chairperson:

Paul M. Larson - Brooks, Larson & Abeyta, Yakima

Subtopics/Speakers:

"Update - Including Amendments to the Business Corporations Act"

C. Kent Carlson - Preston, Thorgrimson, Ellis & Holman, Seattle

"Business Workouts"

Paul M. Larson - Brooks, Larson & Abeyta, Yakima

D. Gordon Willhite - Sax & MacIver, Seattle

David H. Wright - Vice President & Manager, Special Credits Department, Sea-First National Bank, Seattle

K. Peter Zech - Ford, Navarre & Zech, Inc., Bellevue

IV. RECENT DEVELOPMENTS IN SELECTED AREAS OF THE LAW

Sponsored by the Real Property, Probate & Trust Section and the Young Lawyers Section - 4 CLE Credits

8:00 A.M. -
10:00 A.M.

A. "DEVELOPMENTS IN ESTATE PLANNING & REAL PROPERTY LAW"

Subtopics/Speakers:

"Estate Planning"

Thomas C. Gores - Bogle & Gates, Seattle

"Real Property"

Omar S. Parker, Jr. - Perkins, Coie, Stone, Olsen & Williams, Seattle

10:00 A.M. -
12:00 NOON

B. "GENERAL UPDATE IN SELECTED AREAS OF WASHINGTON LAW"

Speakers/Panelists:

Thomas R. Dreiling - Thom, Navoni, Hoff, Pierson & Ryder, Seattle

Wendy R. Gelbart - Attorney at Law, Seattle

Keith T. McClelland - Attorney at Law, Seattle

THURSDAY - NOVEMBER 6, 1980

V. CURRENT ISSUES IN BANKRUPTCY PRACTICE & FAMILY LAW PRACTICE

Sponsored by the Creditor-Debtor Section & the Family Law Section - 4 CLE Credits

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James Hale
President

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ILLUSTRATION OF ESTATE ASSETS AND VALUES

**TAX CALCULATIONS

*Adjusted Gross Estate TOTAL

*Deductions

Amount to spouse tax free
for bequest to charity TOTAL

**NET TAXABLE ESTATE MARGINAL FEDERAL ESTATE TAX BRACKET

*Tentative Federal Estate Tax
Less Credit for State Death Tax

**ESTIMATED NET FEDERAL ESTATE TAX

*Cash Requirements

Estimated Net Federal estate tax
Estimated state death tax
Funeral and administration expenses
Debts, mortgages, and liens
to be liquidated at death
Cash or insurance
bequeathed to charity
Cash or insurance
bequeathed to others TOTAL

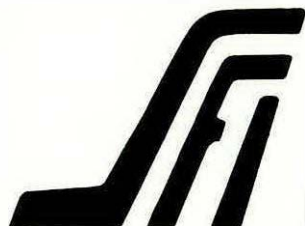
*Funds Available

Real and personal property
available for estate liquidity
Life insurance in estate
Proceeds outside estate TOTAL

**ADDITIONAL LIQUIDITY REQUIRED

**ESTATE SETTLEMENT COST

CODE: Surviving spouse receiving:
Entire estate & insurance, subject
to specific bequest.



SYNDICATED FUTURES INTERNATIONAL

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8:00 A.M. -
10:00 A.M.

A. "UPDATE ON THE BANKRUPTCY REFORM ACT OF 1978"

Chairperson & Moderator:

Eugene A. Craig - Attorney at Law, Seattle

Additional Panelists:

Larry B. Feinstein - Watson, Grosse
& Feinstein, Seattle

Hon. Robert W. Skidmore - Tacoma

10:00 A.M. -
12:00 NOON

B. "RECENT DEVELOPMENTS & ISSUES IN FAMILY LAW"

Chairperson & Moderator:

Patricia C. Kaiser - Attorney at Law, Seattle

Subtopics/Speakers:

"Non-Nuptial Contracts"

Patricia C. Kaiser - Attorney at Law, Seattle

"Joint Custody"

Miles F. McAtee - Attorney at Law,
Seattle

"Washington State Parentage Act"

Carlos Y. Velategui - Attorney at Law,
Seattle

Subtopics/Speakers:

"Mr. Justice Douglas - Thoughts, Opinions,
Precursors"

Vern Countryman - Professor of Law, Harvard
Law School, Cambridge, Massachusetts

"The Due Process Explosion - Recent Developments in Due Process Obligations"

James B. Wilson - Counsel, University of
Washington, Seattle

"Alienage, Residency and Related Rights and
Requirements"

John A. Strait - Professor of Law, University of
Puget Sound School of Law, Tacoma

"News and Media Issues - First Amendment
Impacts"

Camden M. Hall - Foster, Pepper & Riviera,
Seattle

"The Changing Environment - Recent Considerations"

Marvin B. Durning - Durning & Richardson,
Seattle and Washington, D.C.

SPECIAL NOTE:

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interest to lawyers and non-lawyers. Spouses are
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8:00 A.M. -
12:00 NOON

VI. ENVIRONMENTAL & ADMINISTRATIVE LAW

*Sponsored by the Administrative Law Section & the
Environmental & Land Use Law Section - 4 CLE
Credits*

Seminar Co-Chairpersons:

Ellen D. Peterson - City Attorney's Office, Seattle

William S. Weaver - Perkins, Coie, Stone,

Olsen & Williams, Seattle

Subtopics/Speakers:

"Presenting an Effective Case in Complex
Administrative Hearings - Emphasis on the
Omnibus Hearing Process"

John Von Reis - Administrative Law Judge,
Olympia

"Efficiency in Governmental Regulation from the
Viewpoint of a Businessman/Lawyer"

John W. Ellis - President, Puget Power Co.,
Bellevue

"Successful Litigation on an Administrative
Record"

Ellen D. Peterson - City Attorney's Office,
Seattle

"Recent Developments in Administrative, Land-
Use, and Environmental Law - Federal"

William S. Weaver - Perkins, Coie, Stone, Olsen
& Williams, Seattle

"Recent Developments in Administrative, Land-
Use, and Environmental Law - State and Local"

Richard R. Wilson - Hillis, Phillips, Cairncross,
Clark & Martin, Seattle

SATURDAY - NOVEMBER 8, 1980

8:00 A.M. - VIII. ANTITRUST/PATENTS INTERFACE
12:00 NOON AND LITIGATION

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FRIDAY - NOVEMBER 7, 1980

8:00 A.M. -
12:00 NOON

VII. RECENT CONSTITUTIONAL ISSUES — THEIR VERY DIRECT IMPACT UPON YOU AND YOURS

Sponsored by the CLE Committee - 4 CLE Credits

Seminar Chairperson:

Kenneth A. MacDonald - MacDonald,

Hoague & Bayless, Seattle



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Sponsored by the Antitrust Section and the Intellectual & Industrial Property Section - 4 CLE Credits

Seminar Co-Chairpersons:

Thomas L. Boeder - Senior Assistant
Attorney General & Chief, Consumer
Protection & Antitrust Division, Seattle
David L. Garrison - Garrison &
Associates, Seattle

Subtopics/Speakers:

"Patents & Monopolization"
James L. Magee - Sax & MacIver, Seattle
"Licensing of Technology"
Bernard A. Donahue - Boeing Commercial
Airplane Company, Seattle
"Patent Litigation as an Antitrust Violation"
Larry S. Gangnes - Lane, Powell, Moss &
Miller, Seattle
"Patent/Antitrust Update - Review of Recent
Decisions"
David L. Garrison - Garrison & Associates,
Seattle

8:00 A.M. - IX. **ARBITRATION LAW** 12:00 NOON

Sponsored by the CLE Committee - 4 CLE Credits

Seminar Chairman:

Karl B. Tegland - Staff Attorney, State Of
Washington Judicial Council, Seattle

Subtopics/Speakers:

"Arbitration In General: Definitions, Distinctions
& How It Works"
Neal Blacker - Regional Director, American
Arbitration Association, Seattle
"Recent Developments of Particular Interest"
Gerald Aksen - General Counsel, American
Arbitration Association, New York, New York
"Mandatory Arbitration in Washington: The
New Statute and State/Local Rules"
Karl B. Tegland - Staff Attorney, State of
Washington Judicial Council, Seattle
"Mandatory Arbitration From the Court's Point
of View"
Hon. David W. Soukup - Judge of the
Superior Court, Seattle
"Arbitration From the Practitioner's Viewpoint"
Malcolm L. Edwards - Edwards & Barbieri,
Seattle

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Improvements Past, Present and to Come: Washington State's Justice System

by **CHIEF JUSTICE ROBERT F. UTTER**

Washington State Supreme Court Chief Justice Robert F. Utter delivered this message at the 1980 Annual Business Meeting of the Washington State Bar Association. In what has become a traditional forum for an annual State of the State Courts report, Chief Justice Utter comments on developments during the past year.

As trustees of our state's justice system, we recognize that while it has many strengths, it also has many flaws. National leaders of our profession have emphasized delivery of justice is still too slow, too expensive, and too uncertain. While recognizing these flaws, we as a profession have made significant progress and the judges, lawyers, and legislators who have worked to provide a better system have reason to be proud of the progress made in the last two years.

In 1978 a commission established by the Washington State Bar sought to accomplish a number of goals to improve the delivery of justice. Among these were: increase the jurisdiction of district courts and make them courts of record; one trial and one appeal as a matter of right; compulsory arbitration; settlement conferences; trial guidelines for superior courts; expanded use of court commissioners and retired judges; special master proceedings; and increase in small claims jurisdiction.

At the same time, a two year plan was established for the judiciary by our Court Planning Council which stres-

sed improving efficiency and effectiveness in the court system, evaluating the impact of crime upon citizens in courts, reducing impediments to justice unnecessarily resulting from the separation of powers doctrine and establishing an improved research mechanism for the Washington State Judiciary. Key portions of this plan paralleled the proposals of the bar leaders. Stressed in addition to the bar proposals were development of legislation for judicial removal and discipline and legislative alternatives for court funding which would provide for a broader and more neutral source of funding. The court plan also sought to provide methods to increase professional competence of judicial and support personnel and to promote utilization of modern management techniques. It, in addition, sought to encourage and promote citizen participation in the courts; to develop



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more efficient case management procedures; to encourage and promote more efficient criminal procedures; and improve efficiency in appellate, juvenile and trial courts.

Much progress has been made toward achieving these goals. With the assistance of the Bar and legislature, jurisdiction of district courts has been increased and they will become courts of record with an appeal on the record only. A constitutional amendment will be before the voters in November to determine whether this state will have a judicial performance and discipline commission. If passed, Washington will join the other 49 states in providing for an effective means of discipline and removal for judges who become either physically or mentally unable to perform their duties. In cooperation with the Washington Association of Counties, studies are also underway to establish a basis upon which to seek full state funding for courts.

Compulsory arbitration is now a reality and court rules have been enacted to implement that legislation. Washington courts have completed a personnel study inventorying all non-judicial personnel in state and local courts. A new board on judicial education has been established to analyze and provide the most effective education possible for the judiciary and their support personnel in the state. Management techniques have been improved with a broad integration of sophisticated data processing equipment and techniques into juvenile, district, trial and appellate courts. Record management has been stressed in the court, rules for security and privacy of court records have been developed and pattern forms have been developed for various court proceedings.

Communication has been improved between court levels. Court coordinators now exist for each court level. Improved techniques for jury management and utilization have been established in some counties.

Professional case management techniques have been established. Mandatory arbitration is only one of many innovative methods established to improve the speed and efficiency of delivery of justice.

The Seattle-King County Bar Association and King County Medical Society have worked jointly to establish a medical-legal committee. It meets monthly to consider and dispose of complaints lodged by individual lawyers and doctors. Some of these complaints relate to fees. An additional function of the medical-legal committee is to maintain professional liability panels to hear and decide medical malpractice matters. Submission of matters for panel consideration is voluntary and with agreement of both patient and physician. The proceedings are privileged and the panel's opinion is not binding. However, it is hoped the panel's opinion will discourage lawsuits without merit and encourage settlement of meritorious claims without litigation.

The superior court judges and their association have pioneered the establishment of sentencing guidelines in an effort to more fairly and efficiently deal with defendants who appear in their courts.

How were these changes accomplished? The most important ingredient has been close cooperation between the bench and bar. Representatives of our courts meet regularly with the Board of Governors of the bar association and a spirit of cooperation and mutual assistance exists. Great progress has been made in the legislature. The bar association's employment of Mr. William Gissberg, a respected former legislator, to assist the courts and bar association, has been a major factor in the progress achieved.

Excellent cooperation has been obtained from the legislative leadership in both the House and Senate. In the House, Chairman Irv Newhouse and Co-Chairman Rick Smith have been of significant assistance, as have all members of the House Judiciary Committee. In the Senate, Chairman Dan Marsh of the Senate Judiciary Committee, Senator Jeannette Hayner and the entire membership of the Senate Judiciary Committee have been of great help.

Cooperation of the media is essential and has been willingly offered. The public is interested in court reform and when required, major newspapers and other media have actively supported specific projects for court reform.

What does the future hold? The American and Washington Bar Associations and the judiciary of this state are committed to reduce court costs and delay. High costs and delay are avoidable if the bench and bar continue to work together.

The standards of the American Bar Association call for trials within 6 months of filing and completion of appellate review in 9 months. These goals are achievable. To realize them, several principles recognized by the American Bar Association Commission to Reduce Court Costs and Delay must continue to be stressed. Procedures must be simplified, cases differing in complexity must not be treated the same, lawyers and courts must be willing to initiate large scale reforms to attempt the needed dramatic reduction in cost and delay, cooperation in case management between the bench and bar must continue, and non-judicial adjudication stressing mediation, conciliation, arbitration, and the use of special masters should continue to be expanded.

The Commission has been involved in a number of experiments to diminish delay and costs.

Simplified civil procedures used for cases under \$25,000 are being developed in California, Kentucky and Maine. These emphasize combining simplified procedures with limited discovery and strong case management. The goal is for a trial within 7 months from filing of

the complaint. In addition to limited discovery, a mandatory exchange of settlement offers and pretrial conference is involved.

In Colorado, a state-wide rule change has been recommended limiting discovery. If the opposing party does not object within 30 days, limited discovery rules apply.

The Commission is also examining a proposal requiring mandatory exchange of settlement offers and possible mediation by a third party. The payment of court costs, attorney fees or some other compensation is provided for in the event a party goes to trial and their offer proves unreasonable. Also of concern to the Commission is the general reluctance among lawyers to ask for sanctions when they believe discovery has been abused and a corresponding reluctance of courts to grant sanctions.

The appellate process has not been neglected by the Commission. They seek a combination of procedures which could reduce time of hearing in deciding some appeals to as few as 120 days from the filing of notice of appeal. Essential components of this effort are a fast trial record using computer aided transcription or a stipulation of facts. In lieu of extensive briefs, a short statement of arguments and authorities of no more than 10 pages is provided. A conference type argument and an oral decision from the bench close to the conclusion of argument

with a memorandum issued within a few days is also urged at the intermediate appellate level.

Use of lawyers, retired judges and others has been explored with particular attention given to the Special Master rule in Rule 56 of the Federal Rules of Civil Procedure. These proposals closely parallel the earlier recommendations of the Jones Committee.

It is necessary that the judiciary, lawyers, and citizens work together to achieve our goal of effective courts. This state has had a long history of involvement by lawyers, judges and citizen committees to effectuate judicial reform. Our Court of Appeals, the elimination of trials de novo in superior court from district court judgments, and the establishment of a commission on judicial discipline and removal are but three examples of this effective cooperation. The excellent cooperation given by the staff and members of the Washington Judicial Council has been essential to court reform in Washington, and the Council continues to provide an ideal forum for discussion and implementation of many reforms.

I agree with the American Bar Association Commission that for courts to function more efficiently and justice to be more accessible to our citizens, three areas of focus must exist: (1) resources necessary to run the courts must be provided, (2) court procedures must be reformed on a continuing basis, and (3) the entire legal climate which governs much of the pace of litigation must be examined and changed for the benefit of our profession and the public we serve.

To assure adequate resources for courts, judges and lawyers must work together. Judges have traditionally borne the burden of convincing appropriate authorities that their budget requests are necessary and should be granted. The bar and media are, and should be, welcome partners in the struggle.

Reform is a continuing process. State and local bar associations must inform the judiciary when the judicial process needs improvement and work together with judges for that improvement. Public complaints about the inadequacy of our legal system need to be taken to heart, as well. They are, after all, the users of the system. We are simply the technicians.

Last, and certainly far from least, judges and lawyers must work together to establish an attitude that encourages handling litigation at reasonable cost and with all possible speed. Too often delay has been considered an acceptable tactic in litigation. With inequitable prejudgment interest rates and mounting inflation, those owing money should not be able to adopt delay as an acceptable tactic.

It is with great pride that I serve as Chief Justice of a state with the finest lawyers and judges in the nation. Our citizens deserve the best justice system available and our continuing efforts are necessary to provide that. □

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Guidelines for the Conduct of Trials

"Guidelines for the Conduct of Trials" were drafted and presented to the Superior Court Judges' Association by the Committee for the Improvement of the Administration of Justice in April 1976. Those Guidelines were printed in the March 1979 issue of the *Washington State Bar News*. Current members of the Improvement of the Administration of Justice Committee received comments from the Bar relative to said Guidelines, some of which were critical. Believing that the "Guidelines" could stand some revision, the Improvement of Justice Committee undertook a review of the same in 1979 and the following is a proposed restatement of the same Guidelines following the same general format in which they were printed in the March 1979 issue of the *Washington State Bar News*.

1. Jury Voir Dire

It is the responsibility of the judge to assure the efficient use of court time, the efficient use of jurors' time, and to see that litigation is conducted in an expeditious fashion. If voir dire is protracted (without achieving a proper purpose) the responsibility must rest squarely with the trial judge.

Purpose

"A voir dire examination shall be conducted for the purpose of discovering any basis for challenge for cause and for the purpose of gaining knowledge to enable an intelligent exercise of peremptory challenges." (CrR 6.4; see also Trial by Jury, ABA Standards 2.4)

The nature of any particular case obviously will affect the scope of jury voir dire. In the usual case, however, a considerable amount of time can be saved if, during the pretrial conference (see Judge's Desk Book, App. C), the judge informs counsel of the ground rules of jury voir dire and proceeds with the jury as follows:

(1) Judge will first explain nature of case and burden of proof and will give some preliminary instructions to the jury;

(2) Judge will then conduct general voir dire covering knowledge of case, acquaintance with participants, importance of following court's instructions on law, impartiality in general, etc. (see Judge's Desk Book, App. C);

(3) The judge will expect counsel to ask questions of a general nature to the prospective jurors as a group, and will provide an opportunity to do so before the questioning of each individual;

(4) The judge will not ordinarily allow questions which

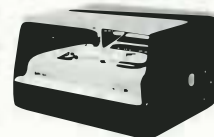
- a. have already been asked;
- b. anticipate instructions on laws unless cleared in advance with the court;
- c. ask a juror to speculate on his verdict if certain facts are proved;
- d. solicit a juror's opinion as to definitions of legal terms or legal opinions.
- e. are clearly irrelevant and seek to embarrass or establish rapport with a juror;

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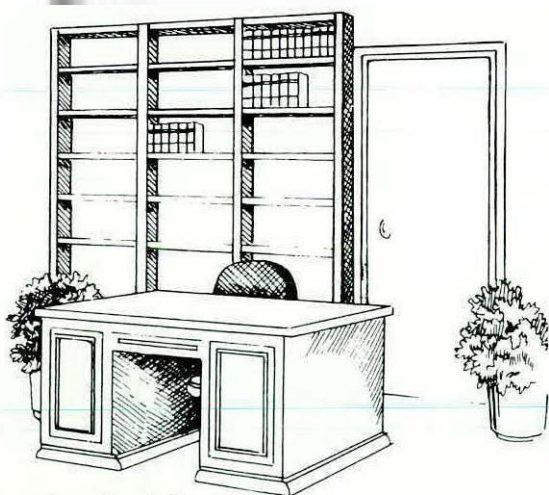
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- f. questions that are in substance arguments of the case;
- g. questions which are grossly unfair or embarrassing to the juror and questions where the average juror cannot possibly know the answer.

(5) The judge need not wait for opposing counsel to object but may interrupt voir dire and rule out questions which violate any of the foregoing ground rules.

It is suggested that with the use of a pretrial conference and announcement of ground rules, the conduct of a general voir dire by the judge, and especially the threat of interruption by the court on its own motion if counsel violates the ground rules, jury voir dire in the average case will consume much less time.

2. Opening Statements

In jury cases opening statements should be a short, concise statement of the litigants theory of the case given in narrative form. It is assumed that the facts alluded to are provable and counsel need not preface each statement of expected proof with the remark, "we will prove" or "Mr. Jones will testify that".

It is appropriate for counsel to advise the jury in a general way that his version will be supported by evidence.

Counsel should not indulge in argument or in overly lengthy and detailed opening statements and may be curbed by the court even if opposing counsel does not object.

In a non-jury case the judge should advise counsel as to whether or not he wishes an opening statement. If the trial judge has read the pleadings and the briefs it is often unlikely that an opening statement will serve any purpose. However, counsel should have the right to make an opening statement if counsel desires to do so.

3. Objections

To the extent possible, anticipatory objections should be raised and settled in limine; once settled, the unsuccessful counsel should not again raise the matter during trial, but to protect his record should be allowed a running objection to clearly predefined lines of questions and answers.

During trial, evidentiary objections should be made promptly as the occasion arises. The sole ground for such objection should be admissibility under the Rules of Evidence and the ground for asserted inadmissibility should be succinctly stated-irrelevant, privileged, or incompetent, unless it is obvious by the nature of the question, answer or exhibit.

Occasionally, counsel, upon receiving an adverse ruling, will ask for a hearing in the absence of the jury, which is, of course, perfectly proper. However, to avoid

unnecessarily excessive sojourns of the jury to the jury room during trial, such hearings should normally be reserved for the regular morning, noon and afternoon recesses.

Alternatively, if the objections are heard at a side bar conference the court should see to it that the record is protected by putting the matter on the record outside the presence of the jury at the next opportunity.

4. Cross-examination

Judges find that unproductive cross-examination can waste an inordinate amount of court time. A judge has the right to curb cross-examination when it is abused, whether or not an objection is made by opposing counsel. A judge should act with great caution, however, in interfering with cross-examination.

5. Limiting Final Argument

While the court has discretionary power to limit final argument, it should never use that power to the point where trial counsel does not have adequate time for a full and fair discussion of his client's case. Factors to be considered in those cases where the trial court plans to limit final argument are as follows:

- (1) Length of the trial
- (2) Number of witnesses

- (3) Number of exhibits
- (4) Number and complexity of issues
- (5) The purpose of final argument

The time allowed for final argument should not be the subject of a court rule, except to state the court's discretionary power to limit final argument where the amount of time requested is clearly excessive and unnecessary for a full and fair discussion of the case.

It is suggested that the court should discuss the length of final argument with trial counsel in an effort to arrive at an agreed limitation that permits adequate time. Such an agreed limitation on final argument would direct counsel's attention to the importance of concluding within the prescribed period of time and would give the court ample justification for intervening in case counsel went substantially beyond the agreed limitation.

6. Action by the Court on Its Own Motion During the Trial of a Lawsuit

Judges have a clear responsibility to control all aspects of the trial necessary to maintain orderly and dignified progress throughout the trial. Unnecessary judicial interference can be as destructive to the judicial process as a failure of the court to assert control in situations clearly calling for it.

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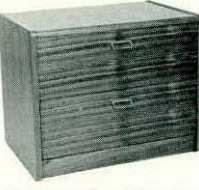
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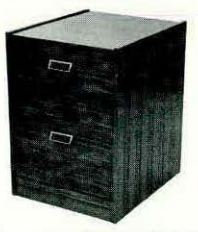
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by the court *sua sponte*, is appropriate and essential to a fair trial.

1. Protracted or unnecessary voir dire of the jury, a subject covered elsewhere herein.
2. Harrassment of a witness beyond the bounds of legitimate cross-examination.
3. The practice of attacking the character of a party or witness to an extent not warranted.
4. The injection of issues into a case which are irrelevant.
5. The failure of counsel to raise issue or cite authorities which are essential to a fair trial. In *Bitzan v. Parisi*, 88 Wn.2d 116, at page 126, the Supreme Court quoted with approval *Maynard Inv. Co. v. McCann*, 77 Wn.2d 616, 623, 465 P.2d 657 (1970), as follows:

"Courts are created to ascertain the facts in a controversy and to determine the rights of the parties according to justice. Courts should not be confined by the issues framed or theories advanced by the parties if the parties ignore the mandate of a statute or an established precedent. A case brought before this court should be governed by the applicable law even though the attorneys representing the parties are unable or unwilling to argue it."

Patience and caution should be exercised prior to any intervention by the court because of the ever present danger that the court does not know or fully understand the reasons for counsel's action or inaction. Conference should be employed where appropriate to give the court and counsel an opportunity to discuss the matter before definitive action is taken.

At all times, the court should be very careful to maintain its impartiality so that intervention by the court does not have the appearance or effect of favoring one side or the other.

7. *Presentment of Findings and Conclusions*

Presentment of proposed findings of fact and conclusions of law in non-jury cases should be prompt following conclusion of the trial. Two weeks is ordinarily a reasonable period of time for preparation. The court should require presentment by a stated date. Findings of fact should be limited to statements of the essential ultimate facts and conclusions of law should be limited to the essential legal conclusions. Objections to proposed findings and conclusions should be presented to the court in writing sufficiently prior to the hearing date to enable the court to review them in advance of the presentment date.

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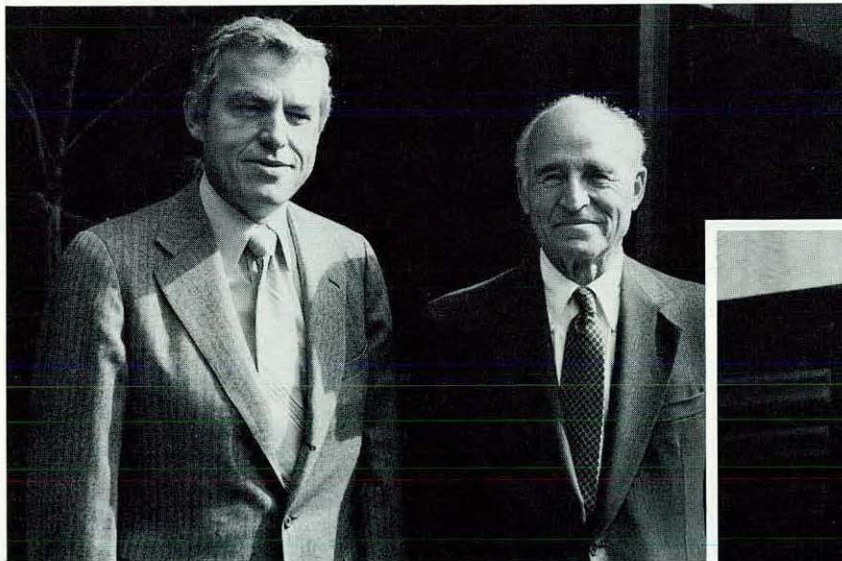
Photo Highlights of



Supreme Court Chief Justice Robert F. Utter, Olympia, delivers the annual State of the State Courts message



State Bar President Michael J. Hemovich, Spokane, reports on Bar activities during his term in office



1980 Washington State Bar Association Award of Merit co-recipients Malcolm L. Edwards, Seattle, and Judge Charles Horowitz, Olympia

Photo credit: John D. McLaughlan, Seattle

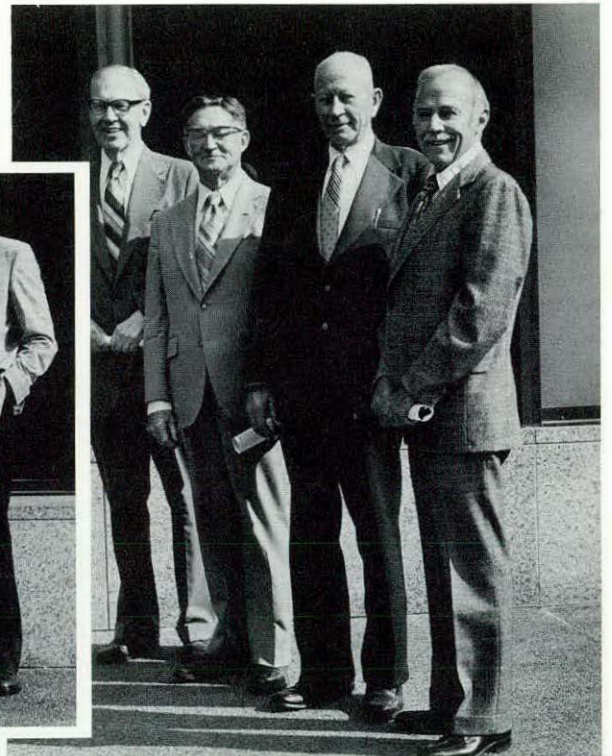


BarPAC Co-chairman Paul R. Cressman, Seattle, lays one on the troops

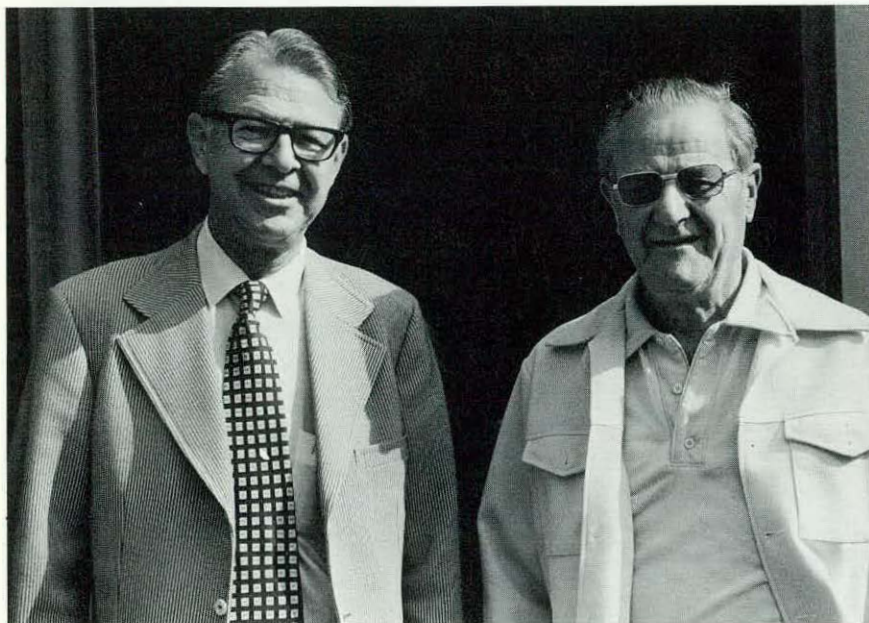
the 1980 Annual Business Meeting



Smiling faces outside the Washington Plaza 1980 Annual Business Meeting site in Seattle, include (front row) MaryEllenKrug, Seattle, Thor C. Tollefson, Tacoma, and Judge Harold J. Petrie, Tacoma, and (back row) Connie Huneke, Spokane, Grant Armstrong, Chehalis, John Huneke, Spokane, Nell J. Hoff, Tacoma, Richard F. Broz, Seattle, William Wesseihoeft, Seattle, and Edward M. Lane, Tacoma



Special Award of Honor recipients Grant Armstrong, Chehalis, Judge Eugene G. Cushing, Seattle, A. Vernon Stoneman, Seattle, and Judge Frank D. James, Seattle



Board of Governors member Dale W. Read, Vancouver, and Clarence A. Lirhus, Seattle



1980-81 State Bar President-Designate Bradley T. Jones, Seattle

Highlights of the ABA Annual Meeting of the House of Delegates

by Kenneth P. Short

Washington State Delegate to the ABA

At the Annual Meeting of the American Bar House of Delegates, we had the usual moments of lively controversy and boredom. All of the items passed and rejected will be chronicled in detail in the American Bar Journal, but the following are worth reporting here:

The House approved a resolution presented by the Philadelphia Bar calling upon all presidential candidates to disavow any platform plank suggesting that judicial selection be on the basis of the political or ideological philosophies of the judicial candidate rather than on merit. This was prompted by the proposed Republican platform plank calling for the "appointment of (federal) judges . . . who respect traditional family values and the sanctity of human life." Recognizing that the ABA Code of Judicial Conduct states that a judicial candidate should not announce his views on disputed legal or political issues and that judges ought not be selected because of personal or political views, the house approved the resolution. It also approved a resolution to amend Executive Order 12097, Standards and Guidelines for Merit Selection of District Judges, to add that "political affiliation shall not be a consideration in evaluating proposed nominees for appointment as district court judges."

Authority was granted by the House to undertake a model enforcement mechanism for lawyer discipline in Administrative agencies. Presently the agencies themselves, in many instances, undertake to discipline law-

yers practicing before the agency by initiating a complaint and then sitting in judgment on it. The relief sought is ordinarily to deny the respondent attorney the right to practice before the agency.

Deferred until the February meeting was a resolution to support S. 2357 eliminating the amount-in-controversy requirements for federal question jurisdiction.

The House disapproved a proposed set of rules for admission to State Court of non-resident lawyers *pro hac vice* if the applicant were simply in good standing at his or her own bar, unless a showing was made of conduct warranting disciplinary sanctions in the forum state. The disapproval reflected the concern of the urban Eastern delegates (especially Dean Griswold of New York) that New Jersey admitted lawyers could *permanently* practice in New York and some rural lawyers who claim that lawyers from adjoining low requirement states could practice at will in the forum state.

The Special Committee on Coordination of Federal Judicial Improvements proposed a set of *non-legislative* procedures for handling, within the judicial councils, complaints against federal judges. However, the Standing Committee on Judicial Selection, Tenure and Compensation proposed support for *legislation* now in Congress for discipline *and removal* of federal judges. The latter proposal is made on the basis that the judicial councils' dealing with the problem informally has not been successful. The House approved support for the legislative rather than the non-legislative approach.

The House approved a resolution that Congress establish uniform principles for the regulation of attorneys fees before federal administrative agencies, prohibit arbitrary maximum fees and that the factors for determination of fees set forth in the Code of Professional Responsibility be used.

The Commission on the Mentally Disabled proposed a resolution calling on all states to permit "limited guardianship" procedures where persons of diminished capacity need some, but not total, assistance in making decisions. (Washington has such a procedure codified in RCW 11.88).

The house deferred until February the consideration of



Kenneth P. Short is the Washington State Delegate to the House of Delegates of the American Bar Association. He is a former president of the Washington State Bar Association (1974-75) and a former member of the State Board of Governors (1970-73).

Standards Relating to the Legal Status of Prisoners.

The Section on Taxation (and Irwin Treiger) submitted an excellently prepared proposal for the Amendment of the Internal Revenue Code to set forth rules for the taxation (and non-taxation) of fringe benefits. The situation cries out for uniformity to bring some order out of a hodgepodge of confusion. Needless to say, it passed unanimously.

The House approved a proposed Amendment to the Federal Immunity of Witnesses Act (18 USC 6003) to provide that the U.S. Attorney shall request an order compelling a *defense* witness to testify over a claim of privilege against self-incrimination when the court decides the order is in the public interest. The Act presently confers such powers on the U.S. Attorney but such powers are only exercised apparently vis-a-vis *prosecution* witnesses. The proposed rule is designed to produce exculpatory testimony for the defendant despite a claim of privilege. The proposal was adopted.

The House created a Special Committee on Federal Judicial Compensation to address the subject of judicial salaries, pensions and per diem allowances, and to attempt to break the "linkage" which currently exists between the Salaries of Members of Congress and judges of the United States Court of Appeals, which it is generally conceded is one of the prime reasons for the present

critical situation insofar as federal judicial salaries are concerned.

Although we passed and defeated several dozen other items dealing with everything from "sexual orientation" bills to the "sector principle" (which refers to dividing up the Arctic Circle), space doesn't permit a report on the whole agenda.

In February, we'll finally receive the Kutak Report, *i.e.*, the Model Rules of Professional Conduct promulgated by the ABA Commission on Evaluation of Professional Standards, although we won't be called upon to vote on it until August, 1981. Thousands of pages have been written in critical analysis of the Report by the Association of the Bar of the City of New York, by the Connecticut Bar and by others. We will (and the State Bar will) be doing some critical analysis of our own in respect to the Report before the next annual meeting.

If you have specific inquiries about any matter pending before the ABA (or which ought to be pending), call or write me. My job is to deal with them on your behalf. □

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CLE Clearinghouse

Potpourri: *Tax Shelters* Seminar Rescheduled; ABA Publishes New Booklet on Opening a Law Office; *Real Property Deskbook* Supplement Nears Completion; and Other Miscellaneous Items of Passing Interest

John J. Michalik

Director of Continuing Legal Education

Abandoning this column's usual, and occasionally periphrastic, approach to a single topic of some perceived interest, we use the space this month to pass on to you a variety of bits of information.

Tax Shelters seminars rescheduled — We recently mailed to all members of the State Bar our 1980-1981 INDEX OF PROGRAMS & PUBLICATIONS containing the State Bar CLE schedule for the coming year, including a *Tax Shelters* seminar with scheduled presentations in Spokane and Seattle on October 8th and 9th. For a variety of reasons, that seminar has been rescheduled. You may want to make note of the fact that

that seminar will now be presented in Seattle on Monday, November 24th and in Spokane on Tuesday, November 25th. Announcing brochures on this program, including registration information and forms, will be crossing your desks in late October.

The New Lawyers in Practice Committee of the American Bar Association's Economics of Law Practice Section has announced the publication, in booklet form, of a *Comprehensive Sequential Checklist For The Lawyer Opening An Office For The First Time*. Authored by Los Angeles attorney Jay Foonberg, the *Checklist* provides a basic system for the opening of a law office and, in its 14 pages, covers many of the considerations which must be taken into account in undertaking such a venture. In a cover letter accompanying the initial distribution of this booklet, Mr. Foonberg has noted that the printer (Stuart F. Cooper, Co., 1565 East 23rd Street, Los Angeles, CA 90011) has graciously consented to send a copy to any lawyer who wants one, for so long as supplies last.

The nearly 2,000 of you who are the proud owners of the 2-volume WASHINGTON REAL PROPERTY DESKBOOK will, I'm sure, be delighted to know that the initial supplement to this work is now on schedule for publication later this fall. In addition to providing updated case law and information on the material contained in the original 2-volumes, the supplement will also in-

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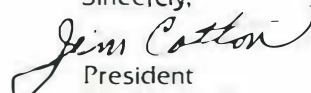
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clude a number of totally new chapters on topics not covered in the original work. As is the usual case with regard to supplementation of our major State Bar publications, the 1980 Supplement to the WASHINGTON REAL PROPERTY DESKBOOK is designed to keep that DESKBOOK functional and a continuing reference work in your library. Formal announcement of the supplement's publication, and ordering information, will be sent to all members of the State Bar in the next few weeks.

TWO CONFERENCES HIGHLIGHT WOMEN'S LEGAL ISSUES. Washington Women Lawyers and the Northwest Women's Law Center are cosponsoring a seminar on "The Law and Women: Issues of the 80's" on Friday, October 17th at the Plymouth Congregational Church in Seattle. Topics to be covered include damage suits for violence against women; the "self-defense" defense; comparable worth and other current employment issues; and discrimination in education. For further information, contact Judith Andrews at the Northwest Women's Law Center, (206) 632-8468. Also, from Friday, October 17 - Sunday, October 19th, the University of Washington will host the *Tenth Far West Regional Conference on Women & The Law*. A number of nationally prominent experts, including Barbara Babcock, the highest ranking woman in the Justice Department, will

address areas of legal concern to women. Nearly 50 workshops will be offered, many providing CLE credit. Topics to be addressed at the Conference are far ranging and include domestic relations, health problems, social & political change, and concerns of women as lawyers. Approximately 800-1,000 law students, lawyers and non-lawyers from the western region are expected to attend. For registration materials and/or further information, contact: Tenth Far West Regional Conference on Women and the Law, University of Washington School of Law, Seattle, WA 98105, phone (206) 543-6604.

Last but not least, an administrative note. The CLE Department at the State Bar Office now has its own direct phone number, designed to help us serve you better. You might want to note that you can now call us directly at (206) 622-6021. ☐

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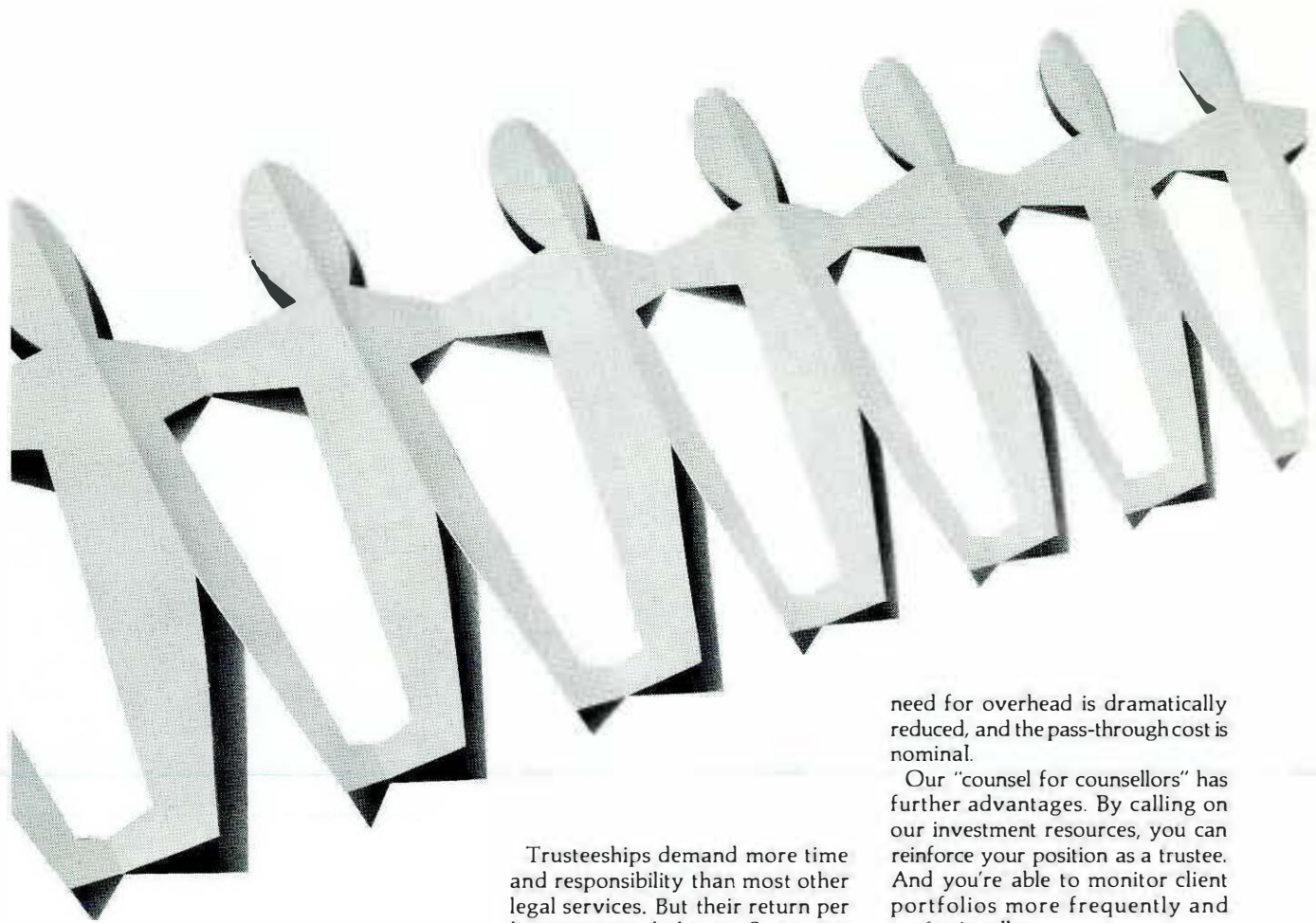
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Judicial Information System Report

A critical financial decision concerning the Judicial Information System will be pending when the Legislature meets next January. The Judicial Information System, or JIS, is the on-line computer system being developed for all court levels in the State by the Office of the Administrator for the Courts.¹ The crucial decision facing the Legislature will be to determine how the system is to be funded in the years ahead.

During the last regular session, the Legislature gave specific direction to future JIS funding when they provided the following directive: "The Administrator for the Courts together with the county and city users of the judicial information system shall prepare a report delineating a feasible plan to convert funding of the Judicial Information System to a user fee schedule. Such report shall be presented to the Senate Ways and Means Committee and the House Appropriations Committee by January 1, 1981," Section 11, 1979-1981 Biennial Budget Legislation. In the same section, the Legislature appropriated over \$5 million for the biennial development and operation of a comprehensive judicial information system encompassing the state's courts.

In response to the directive of the Legislature, the Judicial Information System Committee, the guiding committee of judicial representatives supporting the development of JIS, has named a committee to represent key interests in the judiciary, state and local government, and other concerned organizations. The JIS Funding Committee held its first meeting on May 8, 1980 to begin exploring funding alternatives. Its recommendation and the Legislature's subsequent action is expected to have profound impact on the development of automation in the courts of the State of years to come. You are invited to express your interest to the Committee, whose membership includes: Supreme Court, Honorable Robert F. Brachtenbach, Chairman; Court of Appeals, Honorable Ray E. Munson; Superior Court Judges' Association, Honorable Richard P. Guy and Honorable Walter A. Stauffacher; Magistrates' Association, Honorable Thomas E. Kelly and Honorable George T. Mattson; Legislature, Senator John D. Jones, Senator Phil Talmadge, Representative Gary A. Nelson and Representative Alan Thompson; Superior Court Clerks' Association, Kay D. Anderson; District Court Adminis-

trators' Association, Bea Boone; Washington Association of Juvenile Court Administrators, Robert K. Axlund; Association of Washington Cities, Mayor M. J. Hrdlicka, Mayor Vivian Rowe and Mayor Stan Kersey; Washington Association of Counties, Frenchy O'Donnell; Washington Association of County Officials, Laura Brader; Washington State Bar Association, Michael J. Hemovich; Washington State Association of Prosecuting Attorneys, Curtis Janhunen; Washington State Auditor's Office, Darrell K. Russell; and Administrator for the Courts, Howard S. Primer. □

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¹JIS consists of four subsystems. The number of installed court sites and percentage of total State caseload served is: Court of Appeals (ACORDS), 4 sites, 100%; Superior Court (SCOMIS), 8 sites, 60%; Juvenile Court (JUVIS), 6 sites, 40% (plus some services for all sites) and District and Municipal Courts (DISCIS), 25 sites, 60%.



Committee Reports

CODE OF PROFESSIONAL RESPONSIBILITY COMMITTEE

Formal Opinion No. 173*

Advance Fee Deposits Must Be Deposited in an Attorney's Trust Account Until Earned

The Washington State Bar Association has been asked to issue an opinion regarding the proper handling of "retainers" and "advance fee deposits."

The starting place for resolving this issue is DR 9-102(A)(2) which provides that:

(A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts . . . and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

The general rule of DR 9-102 is that *all* funds of clients must be put into a trust account. A lawyer's funds may not be put in the trust account; except that a lawyer's funds may be deposited into the trust account, when those funds belong in part to the client and in part either presently or potentially to the lawyer. An example of funds belonging in part to the client and in part presently to the lawyer would be a recovery in a personal injury lawsuit when the lawyer is to be paid a contingency fee. Even though a percentage of the recovery belongs to the lawyer, the entire recovery should be deposited in the trust account and the lawyer's portion then withdrawn.

In deciding whether the Code requires advance fee deposits to be placed in the trust account, it is first necessary to define "retainer" and "advance fee deposit". The California Supreme Court in *Baranowski v. State Bar*, 154 Cal. Rptr. 752, 593 P.2d 613 (1979) explained the different definitions.

A "retainer" is a sum of money paid by a client to secure an attorney's availability over a given period of time. The fee paid is considered earned at the time of

payment because the attorney is entitled to the money regardless of whether he or she actually performs any services for the client. 593 P.2d at 618, n.4. So long as the client is aware that the money paid will not, under any circumstances, be refunded to the client, the funds received would be considered a "retainer" and therefore need not be placed in the attorney's trust account.

"Advance fee deposits" are funds given to an attorney for the rendition of future services. The attorney must place those funds in his or her trust account because an advance fee deposit belongs to the client until it is earned by the attorney actually rendering the legal services he or she agreed to perform.

An example of an advance fee deposit would be a \$500 payment by a client to have the attorney handle a criminal case where the agreement is that the attorney will charge \$50 per hour for the work to be performed, to be taken out of the \$500 deposit as earned.

The \$500 belongs to the client and potentially in part to the attorney. DR 9-102(A)(2) states that the attorney must put the \$500 into a trust account and may withdraw the funds due the lawyer as they are earned. On the other hand, should the attorney and client agree that the \$500 is a "retainer" earned by the attorney when paid, which the attorney will not refund and which is a charge for merely hiring the attorney to handle the client's case, the retainer need not be deposited in the attorney's trust account.

The distinction between retainers and advance fee deposits is clear and is the appropriate method by which client funds are to be characterized in determining whether they shall be or need not be deposited into attorney trust accounts. As long as the attorney's clients know and agree with what the attorney intends to do with a fee payment, the problem that has developed over the appropriate method to account for those funds can be solved. The recommended procedure would be for the attorney to have each client sign a written fee agreement which could be easily referred to, should a question arise concerning the agreement of the parties as to disposition of the fee paid. However, even without a written fee agreement, the distinction between "retainer" and "advance fee deposits" and the appropriate method of handling the funds is clear enough to enable attorneys to determine when they must deposit funds paid by clients into their trust accounts.

Any fee paid to an attorney, that the attorney has explained to his or her client is nonrefundable and earned for handling the client's case without further action by the attorney, need not be retained in the attorney's trust account. Such payment is a true "retainer." On the other hand, if the client pays a fee to a lawyer with the understanding that he or she may receive some of the money back from the attorney, and that the attorney will draw against the funds as earned, such a fee must be deposited

into the attorney's trust account. The requirement that unearned fee deposits be placed in the attorney's trust account insures the integrity of clients' funds separate from an attorney's personal funds.

The benefits to clients of being assured of the separate integrity of their funds have been repeatedly emphasized by the Washington State Supreme Court. *E.g. In re Deschane*, 84 Wn.2d 514, 527 P.2d 683 (1974).

Benefits to the profession are also present when lawyers are required to put advance fee deposits in a trust account. First, a lawyer who puts "advance fee deposits" in a trust account will be able to comply with the obligation imposed by DR 2-110(A)(3), which provides: "A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned."

Second, a clear indication that advance fee deposits will be treated as client funds until they are earned will permit members to take advantage of the Tax Court's recent ruling which states that advance fee deposits are not income when they are deposited in the attorney's trust account, but become income when the attorney earns an undisputed amount.

"Retainers," as defined above, need not be deposited in attorney trust accounts; "advance fee deposits", as defined above, must be deposited in a trust account until

the fee is earned. Obviously, there must be an agreement between the attorney and the client as to the purpose for which the funds are paid. The better practice would be to have a written agreement.

**Please note that the Formal Ethics Opinion published in the July, 1980, Washington State Bar News at page 40, numbered 167, has been renumbered as Ethics Opinion #172. Formal Opinion #167 was published in the February, 1979, Washington State Bar News at page 29 and is entitled "Formal Ethics Opinion No. 79 is Withdrawn."* □

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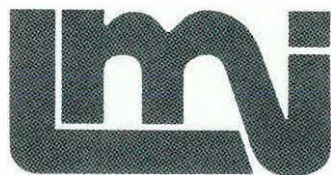
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Foreign Law Questionnaire

Do you have experience in foreign or international business transactions? Have you assisted clients involved in foreign court proceedings? Have you dealt regularly with lawyers in a foreign country? Are you fluent in a foreign language?

If the answer to any of these questions is "yes," please complete and return this questionnaire. Its eventual purpose is to identify lawyers whom other members of the Bar may consult when they encounter problems involving foreign law. Those who return this questionnaire will be contacted by the International & Comparative Law Section of the Seattle-King County Bar Association. The section will request more specific information, which will be used to compile an inventory organized according to legal subject matter and according to country or geographic area. The inventory of information will then be made available to all Bar members at the State Bar office and other locations. Completion of the questionnaire project and the availability of the resulting information will be announced in the *Bar News*.

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YOUNG LAWYERS SECTION

By C. C. BRIDGEWATER, JR.

In the past year this Section has increased its membership and embarked on some new courses of action. Our activities in the past year have been as follows:

1. *Education Project in Spokane* — under the leadership of Pat Williams, this high school mock-trial competition will see its first competition.

2. *Town Halls* — John Ennis and Keith McClelland ramrodded this Seattle public forum which won an ABA-YLD Award of Achievement for 1980.

3. *Kutak Code* — Arden Olson and Chris Otorowski developed the questionnaire for the ABA-YLD and

WSBA samplings on opinions regarding the Code of Professional Responsibility.

4. *CLE* — Under the able leadership of Kelly Corr and Tom Dreiling, the Section has presented interesting and innovative programs on Criminal Law and on an update at the Annual Convention.

5. *ABA-YLD Leadership* — Through such active lawyers as Paul Larsen and Judy Young, our Section has been represented in ABA affairs and has taken a role of leadership in those national affairs.

6. *Miscellaneous Projects* —

a. Disaster Projects — members assisted in educational and legal assistance to volcano victims in Spokane, Cowlitz, and Clark Counties.

b. Boy's State — Ken Rice and Terry Abeyta led section members in this project for high school leaders at Ellensburg.

c. Law Day — Many members spoke to high school classes and explained the legal system. In Cowlitz County, with the help of the Cable TV company, a panel led by Joe Daggy answered questions following the telecast of the ABA-YLD National Law Quiz.

d. Judicial Council Project — Reed Hadley provided communication with the Chief Justice in the dialogue concerning Judicial Discipline.

e. Skills Training — Jo Vestal represented our Section's interest in this regard.

All of these projects reflect the aims, goals, and achievements of the Section, i.e. to benefit the Section, the Bar, and the Public. This Section's Board has met with the Board of Governors on three separate occasions to give input on our activities. I can report to you that the leadership of the Bar has been greatly solicitous to our needs — Mike Hemovich has supported and encouraged both our programs and our growth; and, with his assistance and insistence, Young Lawyers have been appointed to every committee of the Bar.

The concerns of Young Lawyers have been presented by our Executive Director, Eddie Friar, at every Board of Governor's meeting that I have attended. Through Mr. Friar's guidance, the *Bar News* has expanded coverage of Young Lawyer activities. All in all, our Section's concerns have been listened to by the Bar Staff and counsel has been available to us through that staff.

It is difficult to get a sense of direction from the Section membership as to specific programs or needs of the members; but the programs are representative of the concerns of your Board. Participation in our projects has not always been satisfactory; but that will be a constant problem with any state-wide organization. Communication is vital and if your views are to be voiced, they must be heard by your chairperson or your Trustee. In the coming year, I urge you to write to both and express those problems which face our Bar. □

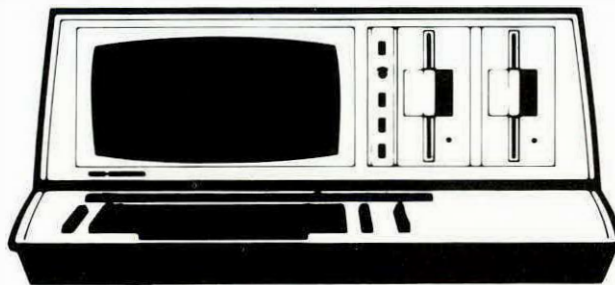
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BENTON-FRANKLIN REPORT

By STEPHEN T. OSBORNE

Any attempt by this writer to describe **Ed Critchlow** or to characterize the extent of the loss to the Bar and to the community occasioned by his death would be destined to failure. To those who knew Ed, eulogies are unnecessary and words alone could not adequately describe him to those who did not know him. Suffice to say that Ed will be sorely missed.

Gene Pratt, formerly with the Benton County Prosecutor's Office, was appointed to the bench of the Benton County District Court, Division #1, succeeding **Darrell Jonson**. **Bill Platts**, formerly in private practice, has joined the Benton County Prosecutor's Office.

Tom Roach, of the infamous Roach clan of Pasco, is alive and well in Washington, D.C., where he is a senior aide to Senator **Mike Gravel** (D) Alaska. This writer is indebted to Tom for his hospitality when I stopped en route home after two weeks at the J.A.G. school in Charlottesville, VA. Tom plans to attend Columbia University next year in New York, majoring in international affairs. Some guys will do anything to get abroad (or out of work).

Finally it is with great pleasure that I announce that after 28 straight losses, the Legal Beagles softball team won its first game. In the bottom of the 7th inning, **John Matheson** hit what would have been an in-the-park homer, plus two extra bases. However, John pulled up lame at third base. Shunning all offers of a substitute runner, John scored the winning run on a single by **Bill Bartlett** of the Benton County Prosecutor's Office. Humbly taking credit for the teams turnaround were the two non-lawyers on the team, both dentists, **Steve** (John's brother) **Matheson**, and **Steve Henager**, both of Kennewick. It is the teams consensus that both have been hitting the nitrous too

much. More next time about the second win of the season.

CLALLAM REPORT

By BILL KNEBES

Newly elected Clallam County Bar Association Officers as follows: **John Rutz**, President; **S. Brooke Taylor**, Vice President; and for the third straight year **John Doherty** has agreed to remain Secretary-Treasurer so long as the local Bar will not audit his books.

The Bar Association Softball Team completed it's season with a 7 and 11 record. Coach **Mick Chinn** worked long and hard molding a group of immature, inexperienced players into an immature, inexperienced team.

Recently two refugees from Thurston County swelled our ranks. **Dave Bruneau**, formerly of the Clallam and Thurston County Prosecutors offices, has joined the firm of Taylor & Taylor. **Brent Normoyle** is sharing offices with **Edward A. "Hank" Hibbard** and **Brian Coughenour**.

Nathan G. Richardson, Jr., Assistant Port Angeles City Attorney, was named "Boss of the Year" at the Spring Banquet of the Clallam County Legal Secretaries Association.

PIERCE REPORT

By ROBERT L. ROVAL

Ron Thompson and **Tom Krilich** have lost a partner, Pierce County has gained a Court Commissioner. Congratulations are in order for **Rosanne Buckner**.

Further congratulations are in order for **Frank Burgess** who has recently accepted a post with the Federal Government as the number one legal advisor for HUD.

Richard L. Levandowski announces that he is now engaged in the General Practice of Law with offices at No. 9 St. Helens, Tacoma, Washington, (206) 383-3383.

John Messina is finally spending some of that hard earned contingent fees. I understand that he is building a modest home on Mortgage Hill with a panoramic view of the Narrows Bridge. Some of his neighbors are the who's-who of the Pierce County Bar Association.

John McCarthy has turned politician on us and is seeking the State Representative seat of the 27th District. Go get 'em John!

From all indications **Frank Ruff** is enjoying his retirement from the District Court. No one has seen him in four months.

By the way, **Art Knodel** has given up a very lucrative practice in Fife to become the District Court Judge in Pierce County. Stand up and take a bow Art.

Pierce County's favorite Municipal Judge, **Erling Tollefson** is still hitting them long and straight even though his practice time has been reduced to four days a week.

Rumor has it that **Neil Hoff** and **Alvin Anderson**, two unlikely candidates for the fat farm, are now enjoying hours of gin rummy under the warm Arizona sun.

Our deepest sympathies are extended to the families of **John Majeres** and **Robert Atkinson** who passed away within the last year.

Pat Comfort has recently assumed the reins of the Presidency of the Pierce County Bar Association and so far has been doing absolutely nothing.

Another world class swimmer will be added to the **Hannula** clan. Dan advises that the blessed event will occur within a couple of months. He even advises us that his wife had a little bit to do with it. Three cheers for ERA!

SEATTLE-KING REPORT

By JAMES L. VARNELL

Honorable Mention. At the Greater Seattle Legal Secretaries Association

Bosses' Night dinner "**Disco Larry**" **Longfelder** was named Boss of the Year. **Marge Burglund** was named member of the year and **Claudia Welch** secretary of the year. A "skit" patterned on Laugh In was presented, and the audience suffered through performances by Judge **Frank James**, Judge **Frank Eberharter**, **Lem Howell**, **Bill Fite**, **Robert Pirtle**, **Barry Ernstoff** and this correspondent. Fortunately no one has requested a repeat performance.

The Seattle King County Bar Association installed new officers at its annual dinner meeting as follows: President, **Paul C. Gibbs**; First Vice President, **Stephen E. DeForest**; Second Vice President, **Harold E. Vhugen**; Secretary, **Cara Lyn Tangen**; and Treasurer, **Thomas S. Zilly**. Elected to the Board of Trustees were **Timothy Bradbury**, **Stephen M. Gaddis** and **Jackie L. Ashurst**. **John Tidwell** and **Bill Lvedke** were recognized for their *pro bono publico* work.

G. R. "Bob" Rockman retired after a long-held position as case assignment administrator for the King County Superior Court. Rockman was last seen leaving the courthouse with golf clubs on his back and a smile as wide as his slice. Speaking of golf, the South King County Bar Association's annual tournament held at the Enumclaw Estates Country Club was won by **Paul Houser** (perennial tournament organizer) over the challenges of **Bob Kuvara**, **Bill Levinson** and outsider **Tom McElmeel**. Finally, this correspondent would like to publicly thank those people who have favorably commented upon the columns written for the *Bar News*. This group includes, and is also limited to, **Steve Quigley**, **Dave Middaugh**, and Judge **David Soukup**.

Recent Appointments. Additions to the King County Superior Court bench include the following: **Shannon Wetherall**, **Tony Wartnik**, **Lee Kraft**, **Jim Bates**, **Jim McCutch-**

eon, **George Mattson**, **Charles V. Johnson** and **Roselle Pekelis**.

Recent Associations. **Philip R. Shucklin** is now a partner with Hoof, Shucklin & Harris. **Gordon S. Jones** is associated with **David J. Sadick**. **Bob Keolker** has moved to the Fourth & Blanchard Building and **Robert W. Swerk** is associated with him. **Thomas Owen McElmeel**, **Lee E. Schultz** and **J. Bradford Doyle** have commenced practicing under the firm name of McElmeel, Schultz & Doyle at 1708 Tower Building. **Henry M. Aronson** has opened his office at 420 New England Building. **Kelby D. Fletcher** has become a principal in the firm of Peterson, Bracelin, Young & Putra, Inc., P.S. **Henry C. Jameson** has become a partner in Ferguson & Burdell and **Michael McCormack** and **Shawn Otorowski** have become associates. **James T. Monahan** has become a member of the Holman Law Offices which is now known as Holman & Monahan. **John F. Biehl** has left Lee, Smart, Cook, Biehl & Martin, P.S., Inc. after 13 years of practicing with the firm to assume the position of Chief of the Department of Law for the Attorney General's Office of the Federated States of Micronesia. **Dennis Smith** has become a member of Reed, McClure, Mocerri & Thonn, P.S. and **David E. Breskin** has become an associate. **James C. Waldo** is now associated with Estep and Li at 2110 Exchange Building.

Ralph P. Teller has opened his law office at Suite 821, Exchange Building, (206) 624-3280. Ralph is sharing office space with **Mike Alfieri**, **John Rosellini**, and **Chris Stamos**.

The law firm of Hennings, Maltman, Weber & Reed has relocated their office to 215 Norton Building, Seattle, WA 98104, (206) 624-6271.



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Attorney Mary Ellen Hanley Appointed to Chair ABA Standing Committee on Legal Assistance for Military Personnel

Attorney Mary Ellen Hanley, member of Karr, Tuttle, Koch, Campbell, Mawer & Morrow, P.S., has been appointed chairperson of the American Bar Association's Standing Committee on Legal Assistance for Military Personnel. Hanley, the first woman to hold the position, has been a member of the ABA since 1970.

Hanley is a member of the Washington Bar Association and that group's Committee on Legal Aid to Armed Forces. She also is a member of the Seattle-King County Bar Association and the Order of the Coif, an honorary legal fraternity.

Since 1979, she has chaired the board of visitors to the U.S. Naval Academy. She is secretary and a di-

Special Award of Honor



FIFTY-YEAR LAWYERS... Honored at the 1980 Annual Business Meeting for completing fifty years' service as members of the Washington State Bar Association were (l. to r.) Thor C. Tollefson, A. Vernon Stoneman, Judge Frank D. James, Herbert M. Hamblen, Judge Eugene G. Cushing, and Grant Armstrong. Also cited, but not available to be photographed, were Hugh H. Benton, Jr., Story Birdseye, Clarence H. Campbell, Phyllis Cavender, John W. Day, Fred Filion, W. L. Gibbon, Lyte L. Iversen, Ross N. Kingston, Herbert O. Landon, John A. Logan, Carl B. Luckeath, Leo A. McGavick, Lowell P. Mickelwait, Stephen J. Morrissey, James E. Newton, Herald A. O'Neill, Judge Othmar M. Pitzen, Corwin Philip Shank, Smith Troy, Floyd J. Underwood, and Robert J. Willis.

rector of the U.S. Marines Youth Foundation, Inc., and is judge advocate for the Seattle Council Navy League. From 1976 to 1979, she was secretary and a director of the United Way of King County.

Hanley was awarded a bachelor of science degree in physics from Brown University in Providence, R.I., in 1951. She received a law degree from the University of Washington, in Seattle, in 1958.

15th Annual Meeting of Washington State Council on Alcoholism

The Washington State Council on Alcoholism, statewide voluntary health agency affiliated with the National Council on Alcoholism, would cordially like to invite all members of the Washington State Bar Association to attend our Fifteenth Annual Meeting on November 13-15, 1980, at the Holiday Inn in Bellevue, Washington. For information and program call (206) 454-3413.

Discipline

Notice of Suspension

Skamania County attorney Robert J. Salvesen has been suspended from the practice of law for a period of two years by order of the Washington Supreme Court. The suspension, which began July 24, 1980, was based upon a series of transactions involving the misuse of client funds which had been or should have been held in his attorney's trust account.

In Memoriam

Henry W. Cramer, 83, of Seattle, died July 28. He was admitted to the Bar in 1923.

Ford Q. Elvidge, 87, of Seattle, died July 14. He was admitted to the Bar in 1919.

Axel Julin, 61, of Bellevue, died the weekend of August 30-31. He was admitted to the Bar in 1948.

Joseph Matsen, 89, of Seattle, died July 21. He was admitted to the Bar in 1920.

Clay Nixon, 76, of Seattle, died

July 3. He was admitted to the Bar in 1933.

Lloyd R. Savage, 87, of Seattle, died August 5. He was admitted to the Bar in 1919.

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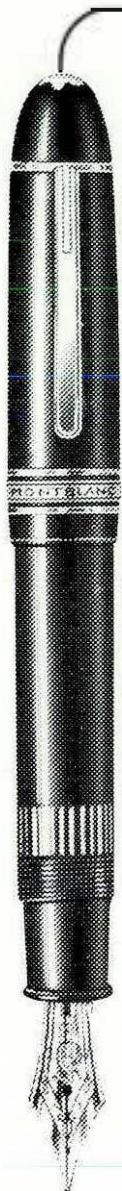


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David M. Abercrombie of the Washington and Hawaii Bars is available for consultation and referrals in Hawaii real estate matters. He is experienced in drafting and litigating questions regarding: Deposit Receipts Offer and Acceptances; Agreements of Sale; Horizontal Property Regime Declarations of CC&R, Bylaws and Rules and Regulations (Condominium and Time Share Condominium Documents); and other Hawaiian real property law related questions.

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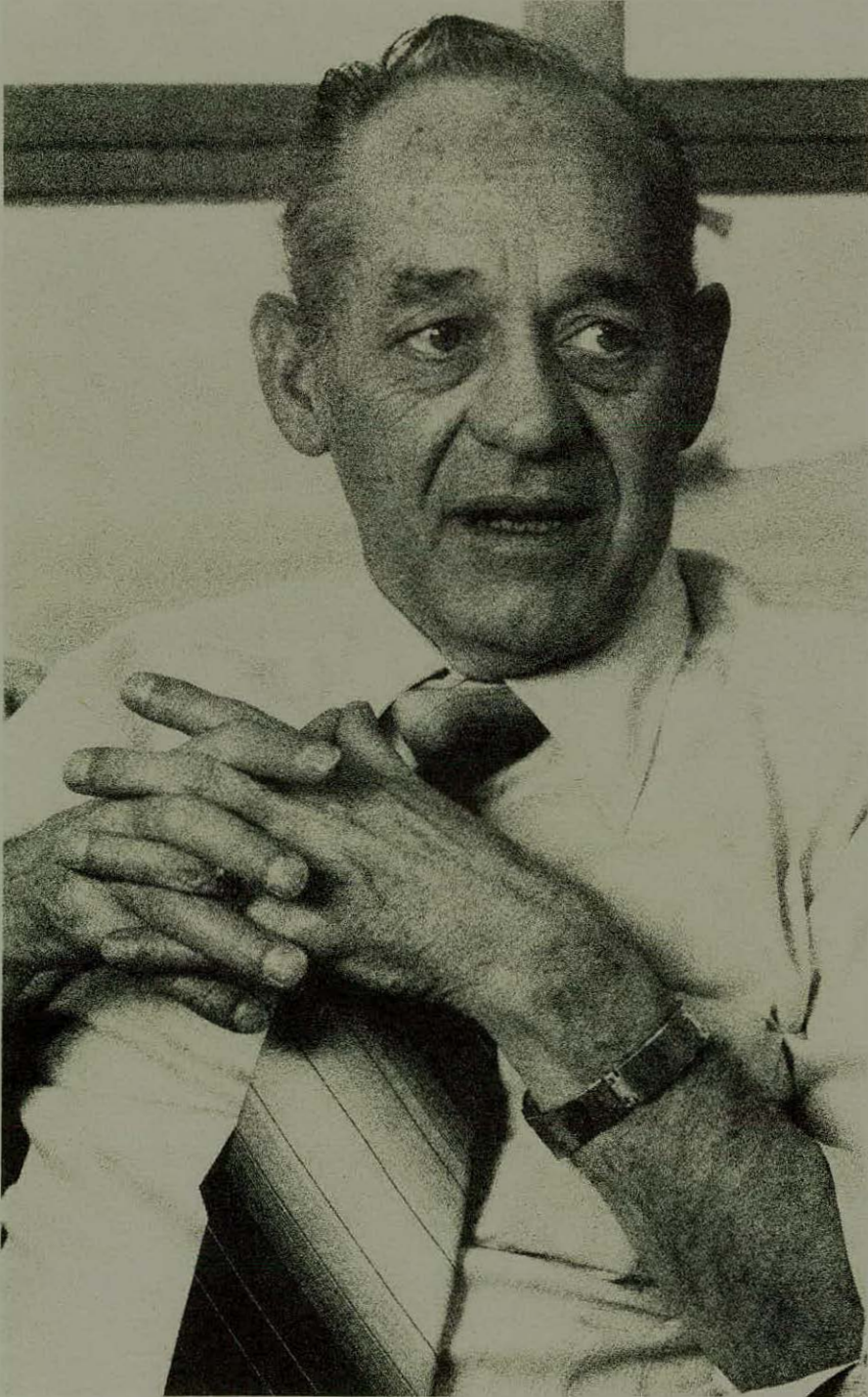
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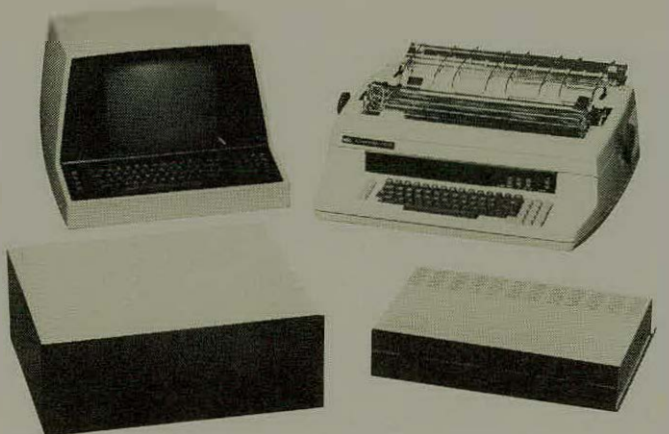
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