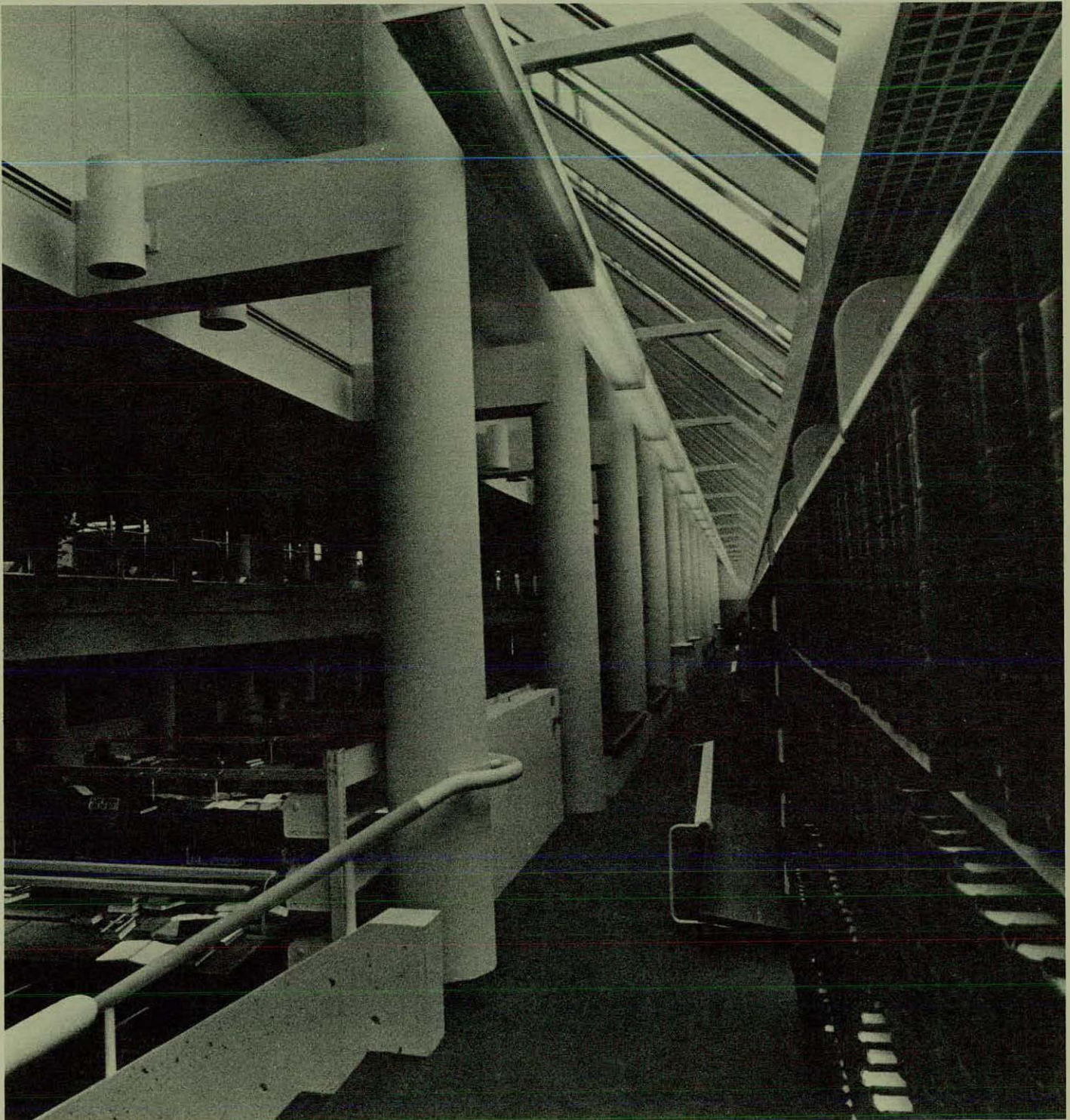


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May 1980

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# WASHINGTON STATE BAR NEWS

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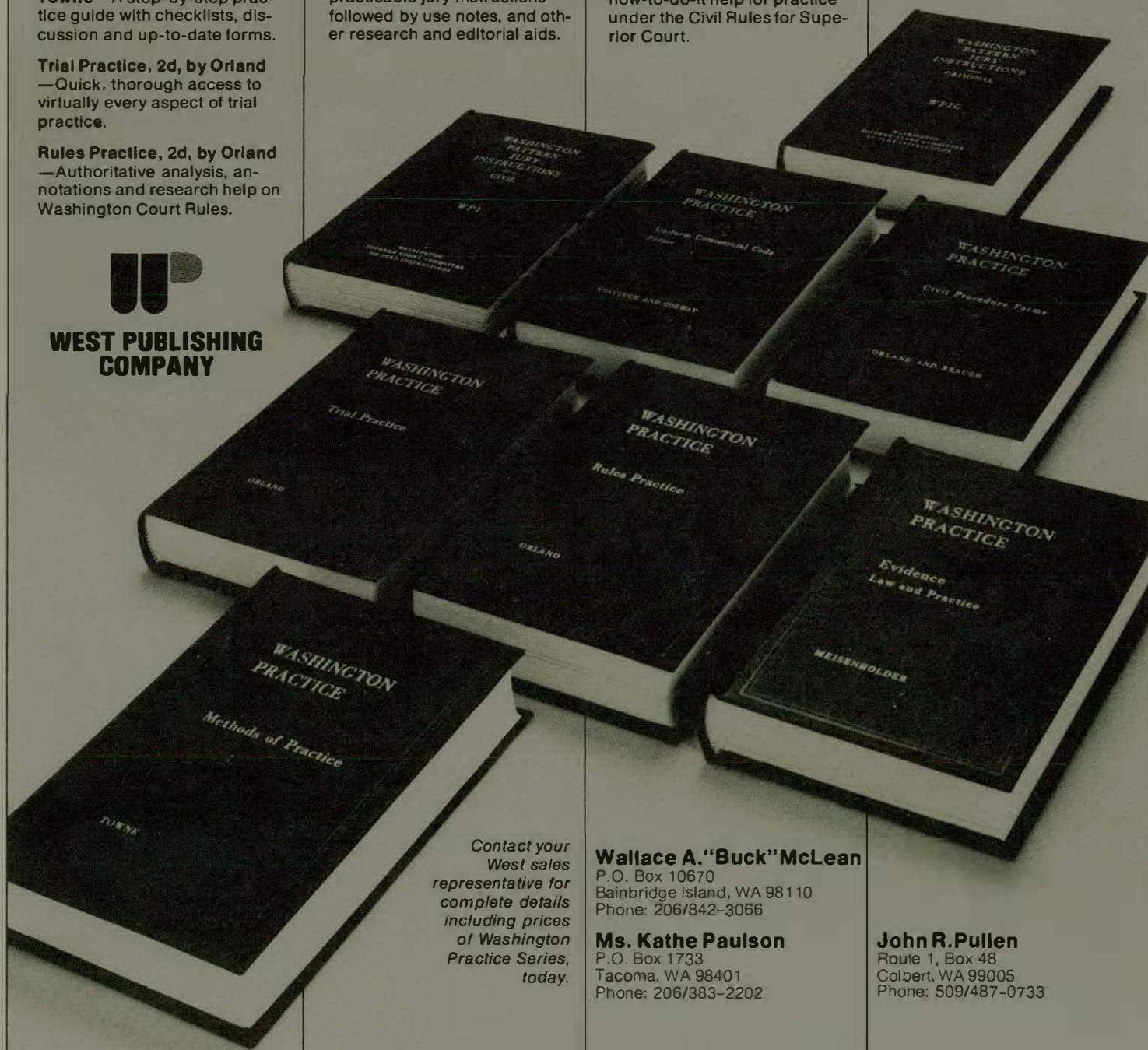
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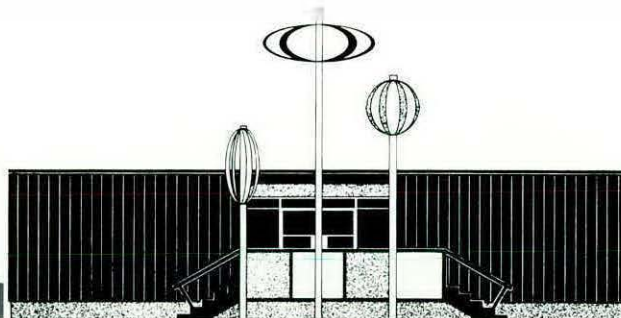
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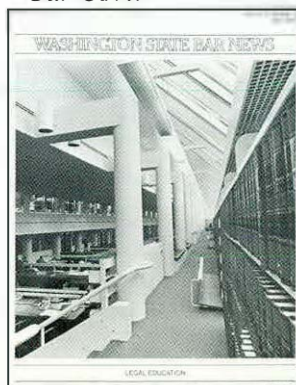
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### Our Cover



A perspective view of the student law library in Condon Hall, home of the University of Washington School of Law, symbolizes the editorial emphasis of this issue, Legal Education. Issue coordinating editor and Editorial Advisory Board member Stephen H. Pond has organized the issue, which includes interviews with the persons responsible for administering the three law schools in Washington State, a look at legal education via the law clerk program, the new lawyer employment situation, and skills training for new lawyers.

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## Ask a Silly Question, Get a Silly Answer?

Editor:

My impression is that the jurors who responded to Judge Brown's questionnaire [*Bar News* 34:3:31] exhibited about the same degree of candor that they ordinarily do when answering "no" to the following useless question posed often during voir dire: "Do you know of any reason why you cannot be fair and impartial in this case?"

In short, I believe the jurors gave Judge Brown the answers they thought he wanted.

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## Take the Bar Out of the *Bar News*

Editor:

I was quite surprised to see the fact that the *Bar News* is featuring Jake's Bar on the cover of its February issue.

As you may or may not know, the great Rumpole, English barrister, says every Englishman's Gin bottle is his castle. From time to time he confers with his solicitor at an English pub. That makes good theatre on the educational channel; however, your use of the barroom front on our state magazine hardly raises our Hooper Rating with the public.

**ROBERT E. BROOKE**

Seattle

## I Like Mike

Editor:

It is easy to see why President Hemovich is revered and honored among lawyers in the State of Washington. I have been noting his recent articles in the "President's Corner" in the monthly publications of the *Washington State Bar News*. They reflect his integrity, his ability as a lawyer, and most of all his dedicated efforts to preserve, protect and

propitiate the highest standards in the practice of law.

I compliment him for his dedicated service and good work. He has my highest admiration.

**THOMAS MILBY SMITH**

Spokane

## Why Can't More Than One Judge Hear Motions in King County?

Editor:

Seattle attorney Cheri L. Filion wrote in the February *Washington State Bar News* [34:2:9] an intelligent and understandable criticism of the "local Local Rule" requiring that counsel confirm motion hearings with the motion calendar by mid-day prior to the hearing of the motion or face having the motion stricken from the calendar.

I have found this requirement annoying and, in fact, the entire manner in which motions are heard in King County has always seemed inadequate.

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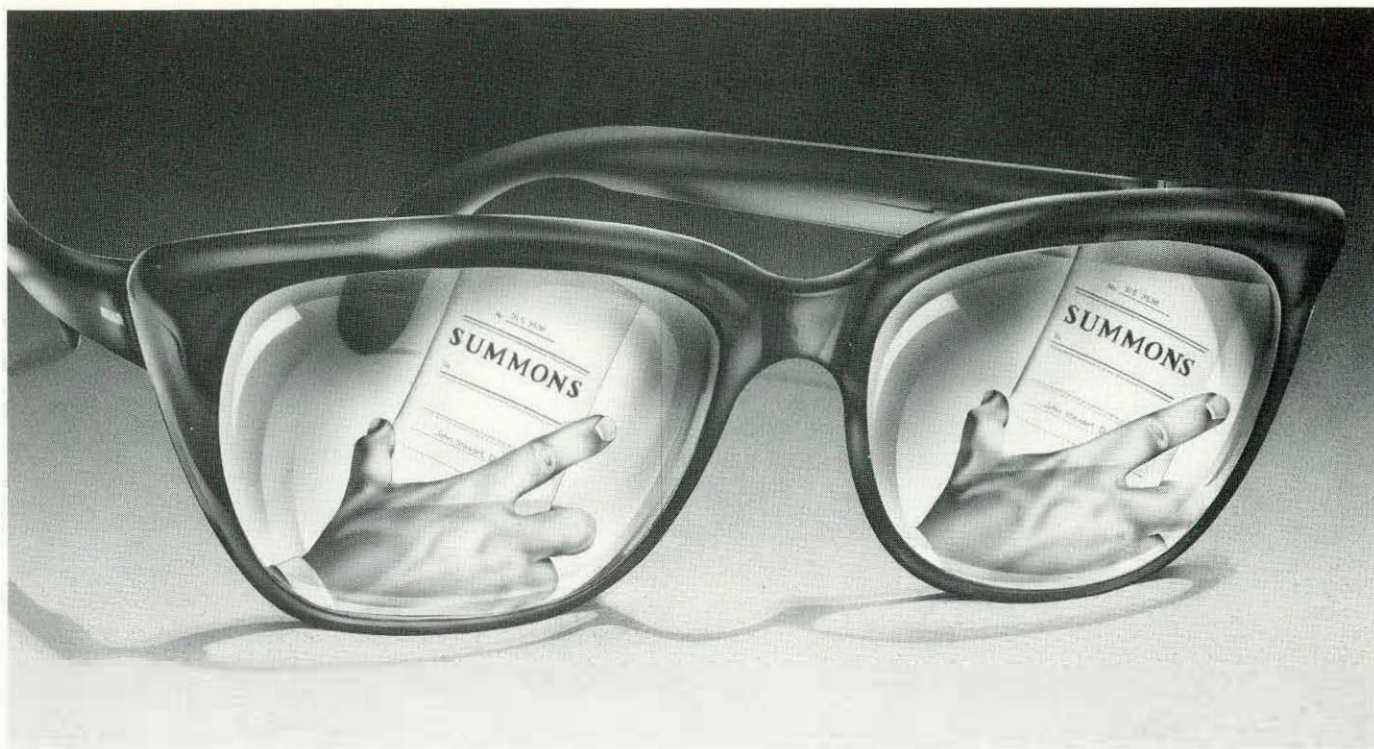
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quate to me. Attorney Filion called the rule "unjust;" I'm not sure that is the accurate critical adjective. It is certainly unfair, unnecessary and burdensome, and it is brought about, of course, by the virtually unique King County system of dumping in excess of 60 motions (I have seen one calendar that exceeded 75 motions!) on one King County judge.

I have in the past made photocopies of the King County Motion and Summary Judgment Calendar and shown them to judges in other counties. Several of these judges told me that faced with such a motion calendar, regardless of the voluntary or involuntary cancellations made the day preceding hearing, they could not adequately or competently discharge their constitutional duties. It does not take much imagination to come to the same conclusion as these judges and to perceive that changes are needed in the King County system.

Lawyers are supposed to be trained to think analytically and rationally

and, hopefully, to use common sense. Doesn't the notion of dumping dozens of motions daily onto one judge — motions in which the lawyers and particularly the clients have very important matters at stake — seem unreasonable?

Take February 26, 1980, for example. I checked with Judge Warren Chan's motion court clerks in the afternoon just to see what things were like. When I walked in, they looked at me like "Oh no, not something MORE!" They told me their summary judgment motions went clear over into the afternoon. Their motion calendar had over 50 items on it; most appeared to be "confirmed." I lost count of the summary judgment motions for the 26th and 27th.

Over and over again in other counties, particularly counties like Pierce where the cases are preassigned (and of course in Eastern Washington counties where they don't need preassignment because there may be only one judge who handles the entire

case load, or two judges who divide it down the middle between them), the common experience of counsel involved is to find a judge who knows what the case is about, has some degree of familiarity with the file ever since it appeared on his desk, and is able to give some careful thought and attention to the issues and facts involved in the particular motion or summary judgement before him, *and* to those *previously* heard.

Contrast the system in King County: The motion judge is faced with a daily calendar in excess of 60 to 70 matters. Luckily a few cancel the day before the hearing. Then a few additional cases are cancelled involuntarily, as happened in Attorney Filion's unfortunate experience, due to the "unjust" King County "local Local Rule." Even so, the judge still has a large number of motions piled up before him in which he attempts to do justice on the following day. The calendar may still be too long, so some of the motions may be referred



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out to another judge for hearing, and he or she has to spend a few minutes in chambers quickly, and I assume frantically, reading the motions and briefs before attempting to make a ruling, all on about thirty minutes notice.

The clogging of our summary judgment calendar and the estimated three-year delay for trial dates in King

County (see SKCBA *Bar Bulletin*, January 1980, page 3) spawns a further disadvantage for King County litigants, unknown perhaps to many counsel. I refer to the numerous Washington *bonding* statutes such as those for electricians, motor vehicle dealers, mobile home dealers and manufacturers, and for general and specialty contractors' registration

bonds.

Although the issue(s) have never been squarely resolved at an appellate level (probably due to the anachronistically low amounts for such bonds), it appears that Washington is a "race state" in regard to judgments against such bonds. See RCW 18.27 *et seq.*, illustrating how, when plaintiff's counsel gets his judgment, he just sends it to Olympia, and the department tells the bonding company to pay off. Thus, what happens, and I see this as counsel for one of the bonding companies, is that litigation in smaller counties often results in faster judgment against the bonds than in King County. The due process and equal protection ramifications are all too obvious; Washington has a duty to provide efficient and fair justice to all citizens, and King County litigants may well be at a disadvantage in this area of bond claims.

Another example is objections to interrogatories or interrogatory answers. I have had the experience several times of making good faith objections to numerous utterly dilatory, stupid, and non-responsive interrogatories, or answers, and have the motion judge rule in my favor on almost every objection and then say with a sigh that he simply does not have additional time on the calendar to finish ruling on the objections and I will have to note them up again in order to complete the present dispute.

Many counsel in King County have also had the experience of realizing sadly through the middle of their argument on a summary judgment motion that while the judge has tried hard to understand the issues, it is obvious that he or she has simply not had the time to read all of the briefs and affidavits, look at the exhibits, etc., in order to fully comprehend the matter. What often happens then is that the judge, trying conscientiously to recover from this disadvantageous position, allows the arguments to go on for far longer than the time routinely allowed for each counsel. This backs up the calendar still

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further.

The situation in King County promotes uncertainty and hesitation by the motion judges, making them inclined, to be on the safe side, *not* to grant motions for summary judgment which *defense* counsel may richly deserve.

All of this could and should be forcefully stopped at once. The simplest expedient is to preassign to about ten judges all matters on the motion and summary judgment calendar and to establish a rule that Judge X will take all matters whose file number ends in 3; Judge Y will take all matters whose file ends in 4, etc., or a simple variation of this sort of approach. Even if cases were not *totally* preassigned in King County, the distribution of the work load among the trial judges for the motion and summary judgment calendar would be enormously reduced and each judge would only have about five or six matters on the calendar each morning — *exactly* like it is in Pierce County. Wouldn't it be at least worth *trying* this, say, for May or June of 1980?

Over and over again I have heard the same old hackneyed arguments as to why we just can't do this in King County, or why King County has some kind of unique paralysis or problem that prevents this.

Judge Frank Roberts told me that a couple of years ago somewhere in Ohio (I think it was in the vicinity of Cleveland) a county had a system like King County's, and as with King County nothing had been done about the problem for years. He said that fortunately a few no-nonsense judges on the Ohio State Supreme Court (which makes the rules determining these things) took the matter in hand and established a form of pre-assignment and division of cases and motions, and directed that it be implemented regardless of objections. The result was a tremendous improvement, according to Judge Roberts.

I think Attorney Filion's objections

are very well taken and we should immediately divide the motion and summary judgment calendar among approximately ten superior court judges to insure more time for consideration of these matters and to eliminate the necessity for the highly unfortunate if not unjust King County rule requiring confirmation of the hearing of a motion the day before.

Motions are not filed just for the fun of it, and counsel ought not to file motions that are not going to be heard, but in any event, the sole reason for this "local Local Rule" is that one judge has an unnecessarily and detrimentally heavy work load.

DON M. GULLIFORD

Seattle

□

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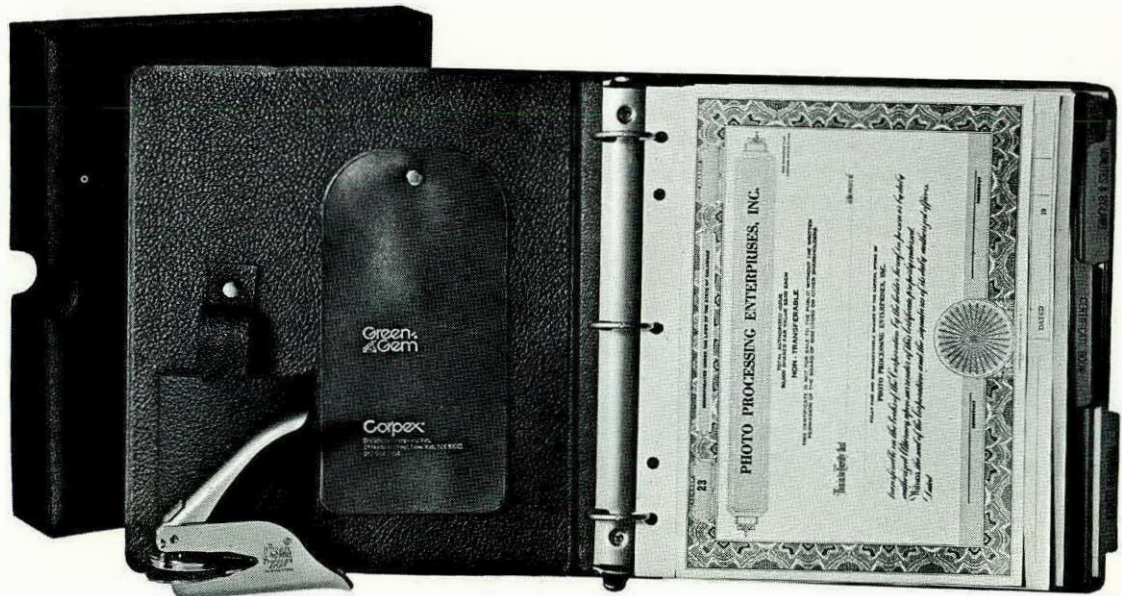
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## You Get What You Pay For

Some say that a state bar association should exist solely to administer a bar examination and to administer discipline to persons who pass the bar exam but fail as lawyers. Perhaps those who say that are right.

As one who is still suffering with the death throes of kneejerk liberalism ("A conservative is a liberal with broken kneecaps"), I remain attracted to the view that our state bar association should serve a broader purpose than that of police officer for the legal profession. You know, serve the public and all that. Thus, the bar association should favor the election of lawyers to public office, not because it might be better for lawyers, but because it might result in better government. The bar association should not be concerned with the lawyer who makes money through lawyer advertising, but it should be concerned with the lawyer whose advertising deceives the public. The bar association should be concerned about the failure of most lawyers to carry malpractice insurance not because an uninsured lawyer might become a bankrupt, but because a member of the public (more commonly known as a client) is left unprotected. Continuing legal education (and our bar association has one of the best CLE programs in the country) should serve a more significant purpose than that of satisfying the Internal Revenue Service that an out-of-state meeting is tax deductible. Law is a business and the legitimate business of most lawyers is to make money. But once you have the paycheck, there's no satisfaction or "fulfillment" unless you believe you've done some public good. Lawyers like to think they are unique because of the tradition of being "officers of the court" which can be translated to mean "officers of the public". But even the assembly line worker who tightens lug nuts all day finds satisfaction not because of the pay, but because the damn wheel doesn't come off.

Because I harbor these rather quaint beliefs, I found some satisfaction in the unanimous vote of the Board of Governors in February, 1979, to make a commitment to significant support of law-related education in this state, which included the idea that the bar association should be the "leading agency" to make the teaching of how laws are made and what lawyers and courts do an accepted part of the basic education K-12 curriculum in public and private schools. (*Bar News*, 33:3:24) The Board's action followed a presentation by King County Superior Court Judge Francis E. Holman and Dr. Peter J. Hovenier, Associate Professor of Education at Western Washington University — among others — on behalf of the Washington State Committee for Law-Related Education (WSCLRE).

WSCLRE, as Judge Holman explained, was formed by participants in a 1974 regional conference in Seattle of "leaders from the legal and educational communities

... for the purpose of developing statewide programs in the field of law-related education." The conference was funded substantially (\$10,000) by the ABA, with additional financial support from the state and Seattle-King County bar associations. Subsequently, WSCLRE was able to pursue limited law-related education projects primarily because of grants totalling \$10,000 from the Superior Court Judges Association.

In August, 1979, then bar association President David Hoff advanced the Board of Governors' commitment to law-related education by appointing the state bar's Law Related Education Task Force, chaired by Seattle attorney Nancy P. Gibbs.

Last month on April 11 Gibbs — together with Dr. Hovenier of WSCLRE — met with the Board to present the Task Force's report and recommendations.

\* \* \*

**First, the good news: SONICS 98, BUCKS 94.** I throw that in as a belated bid for a press pass to the Kingdom. I also throw it in because by the time you read this, we may be fresh out of good news about the Sonics. I also throw it in as part of my continuing effort to explain how this column is written: On this occasion, I arrived at my desk after Game 7 with Milwaukee confronted with the task of writing both this page and "The Board's Work" report. After my third cup of black coffee, I decided I did not have the energy to write "The Board's Work"; that decision created enough additional space in the *Bar News* to permit me to ramble on indefinitely here.

Next, because of a couple matters on the Board's agenda and knowing that this issue of the *Bar News* was designed to focus on legal education for lawyers, I decided I would focus on legal education for non-lawyers, at least to the extent that I could focus on anything.

\* \* \*

Again, I must pause, this time to pass along several matters of interest which would have appeared in "The Board's Work" if I had written it:

- Chief Judge Keith Callow of the state Court of Appeals, and Judge Philip Faris, a member of the Superior Court Judges Association Board of Trustees, met with the Board to discuss proposed legislation which would require future state judges to become members of the Public Employees Retirement System (PERS) rather than the existing Judicial Retirement System. The Board authorized President Hemovich to appoint two lawyers, preferably Board members, to serve as active liaison members of the Superior Court Judges Committee on Judicial Retirement. Hemovich appointed Board Members Dean and Welts. With several of its members absent, the Board also voted 4-3 to place the bar association on record as opposing the proposal to place new judges under PERS and as opposing any material change in the present Judicial Retirement System, save possible

housekeeping amendments. The consensus of those voting "no" was that the liaison representatives should not go to the judges' committee "locked in" to any predetermined position.

- The Board reviewed the opinion which resulted from its recent inquiry to independent counsel (Hugh F. Bangasser of Preston, Thorgrimson, Ellis & Holman) in which it is concluded that solicitations and assistance to county prosecutors by the bar association for possible prosecutions under RCW 2.48.180 (unauthorized practice of law) do not constitute violations of federal and state antitrust laws. See "The Board's Work", *Bar News*, 34:4:41. Thereafter, the Board authorized the Unauthorized Practice of Law Committee to refer suspected cases of unauthorized practice to appropriate county prosecutors, subject to further advice by the bar association's General Counsel Kurt Bulmer.

- Walt O. Knowles, Spokane attorney and a member of the State House of Representatives, reported to the Board about his volunteer activities on a statewide basis to encourage lawyers to become candidates for the Legislature.

- The Board voted that lawyers who delay payment of their annual dues past the February 1 deadline should pay a penalty: in the future, those paying their dues after March 1 will be assessed a penalty of 20 percent of dues owing and those delaying payment until after April 1 will

be assessed 50 percent of dues owing.

\* \* \*

If you feel that you cannot wade through the following description of the report and recommendations of the Law Related Education Task Force, and what the Board did about it, then skip to the end and read about Poulsbo attorney Jeffrey L. Tolman who has done more than most to inform non-lawyers about the legal system.

*The Task Force reported:*

- "In brief, law related education ('LRE') as presently offered in our public schools (K-12), or more accurately the lack thereof, is appalling."

- "LRE must compete for attention and financing not only with the more readily identified and promoted interests of the handicapped, ethnic minorities, and the gifted student population, but also with the not so readily identified but nonetheless highly promoted interests of business and other professions."

- "In contrast, the efforts of the organized bar have been sporadic at best. While organized tours of local courthouses, for example, should not be criticized, they are grossly insufficient. . ."

- "Any long-term solution must reach the [state] administration and . . . ultimately the legislature in order to generate the continued support for LRE necessary for LRE to become an accepted integral part of public education or in the best of all possible worlds included in the

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statutory definition of 'Basic Education'. Even such a long term more or less 'self sustaining' solution requires the continued support of the Bar if it is not to be overtaken by competing interests coming to the fore."

- "It is equally important, however, that support for LRE by the organized Bar not be mistaken for arrogating LRE as the sole prerogative of the Bar. By its nature, LRE is largely within the realm of professional educators

- "One of the most active entities is the American Bar Association Special Committee on Youth Education for Citizenship established in 1971 which has published a wide variety of materials including a directory of LRE projects, a bibliography of law related curriculum materials, guidelines for funding, and a triannual LRE publication, *Update*, directed to educators." The Task Force consulted with Norman Gross, staff director of the ABA Committee, who estimates that the minimum annual budget to start a successful LRE program is \$40,000 to \$50,000.

- "Washington is but one of 12 state bar associations not involved in LRE although by appointment of this Task Force it could be said to be in the company of four bars whose LRE effort has been to appoint a committee. The remaining 34 state bar associations have undertaken more ambitious efforts. These efforts range from only financial sponsorship of isolated LRE projects to comprehensive LRE programs which are (i) administered by the Bar Association but receiving broad support and active involvement of educators often including the state education department (such as in Florida, Illinois, Kansas, Missouri, Ohio and Virginia); (ii) administered by the state education department with the support and active involvement of the Bar (such as in Alabama, Connecticut, New Hampshire, New York, North Carolina, Pennsylvania, South Carolina, South Dakota, Utah and Vermont); or (iii) administered by an institute, foundation, center, etc., with the support and active involvement of both the Bar and educators (such as in California, Maryland, Colorado, Oregon, Texas, Wisconsin and Wyoming)."

- "While Bar financial support has been as high as \$75,000 a year in Texas and between \$60,000 and \$70,000 a year in New York, a phenomenon of successful programs is their attraction of other funding sources."

*The Task Force recommended:*

WCLRE should continue as the primary entity for the development of LRE programs. The bar association should furnish "in kind" support valued at \$13,500 to permit use of bar office space and secretarial assistance and the hiring of a half-time LRE administrator. WCLRE should be given additional financial support budgeted at \$11,480 "on a continuing basis in conjunction with the Superior Court Judges Association and . . . others

- A high level Advisory Committee on Law Related Education should be established consisting of 30 to 40 prominent leaders in the fields of education, government, law enforcement, the Bar and the judiciary.

- A Standing Committee for Law Related Education should be established by the bar association to promote lawyer involvement in LRE programs.

- In summary: "The Administrator to be hired, initially on a half-time basis, is a key factor of this recommendation. Success or failure will depend in large part on this individual's efforts and abilities. . . While the recommended financial support is more likely to attract the Board's attention, the importance of the Advisory Committee and the Standing LRE Committee should not be overlooked. The Advisory Committee is particularly important as a vehicle of focusing the attention of those in influential positions on LRE. Equally important, these individuals are representatives of organizations which are major potential sources of funding."

\* \* \*

The Board voted to create a standing bar association committee to be called the Committee on Law Related Education to be composed of the present Task Force members with the addition of Arthur D. Swanson of Renton.

The Board also voted to furnish \$2,000 in "seed money" and another \$1,000 in postage and office supplies to the Task Force or the Committee to implement an LRE program subject to (1) the establishment of a non-profit corporation with tax exempt status to operate as a Bar Foundation to administer the program and (2) the approval of the Board's Budget Committee. The Board also agreed that the Foundation "if successfully established" could use the bar office as its mailing address.

\* \* \*

I'll admit it: I'm a non-believer. I just don't think two grand plus a few stamps is going to make our bar association the "leading agency" in LRE as envisioned by the Board in February, 1979.

This half-hearted action by the Board of Governors came on the motion of Board Member Lowell K. Halverson, who I suspect supports the Task force's recommendation, but who, after nearly three years on the Board, has broken kneecaps and knows he doesn't have the votes for more than a lick on a bunch of postage stamps and a fragile promise.

A few figures come to mind: the bar association has over \$44,000 remaining in its contingency fund. It has budgeted \$368,000 for CLE and \$2,500 for the CLE Board. It budgeted \$25,000 for attendance by Board members and other officials at ABA meetings and the Western States Bar Conference, and it is already nearly \$3,000 in the red for those activities. It budgeted \$37,500 for "conferences and meetings" and \$50,000 for the existing bar committees. The 100-plus members of the

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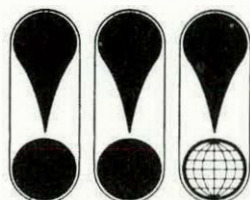
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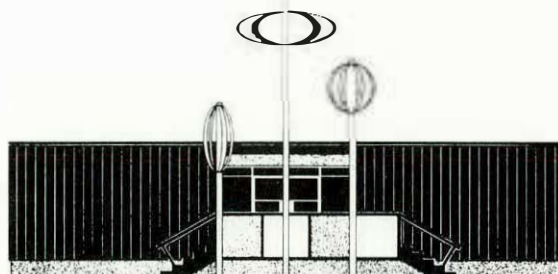
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Superior Court Judges Association previously has contributed \$10,000 to LRE, and stands ready to give more; you would think that the 10,000-plus members of this bar association could do at least as well. Otherwise, the damn wheel will come off.

\* \* \*

This brings us to the sound of one hand clapping: Jeffrey L. Tolman of Poulsbo, a young and enthusiastic attorney who has started a successful seminar program for non-lawyers in Kitsap County. He reported to the Board on this program which has just concluded its second year.

"I never could understand why 'Ignorance of the law is no excuse'", Tolman explained. "Where is the public supposed to get this knowledge?"

His course which, in a community of 3,000, has attracted 100 to 200 persons to spend \$20 to cover the cost of handout materials (often including anecdotes about the legal system, together with such things as a copy of a real estate contract; a description of how small claims court operates; and a sample summons and complaint) and to attend eight evening classes. Speakers attracted to the program include 12 Kitsap county attorneys, local members of the judiciary; a representative of the Washington State Insurance Commission; Secretary of State Bruce Chapman and Supreme Court Chief Justice

Robert F. Utter.

Tolman described the first class as a "very practical where-to-go, how-much-it-will-cost, who-is-the-judge approach to our court system" followed by classes on "basic legal areas which touch the public," such as family law, juvenile court, personal injury litigation and real estate. He stressed that all participants took pains to prevent the classes from serving as an "extravagant advertising campaign" for individual lawyers.

"I have had many positive comments," Tolman said, "about 'after reading so much about lawyer X or Judge X it was nice to finally meet him' and 'lawyers and judges seem to be very misunderstood — they aren't such bad people after all'."

Tolman envisions classes such as his being conducted by other lawyers on a statewide basis: "There should be a class in Grandview; there should be 10 in Seattle."

The Board agreed that there should be "follow-up" to see whether local bar associations around the state could conduct similar programs under a model plan to be developed by Tolman. The Board did not describe what "follow-up" will be undertaken.

Some say that a state bar association should exist solely to administer a bar examination and to administer discipline to persons who pass the bar exam but fail as lawyers. Perhaps those who say that are right.

JVW

## Yearning To Breathe Free

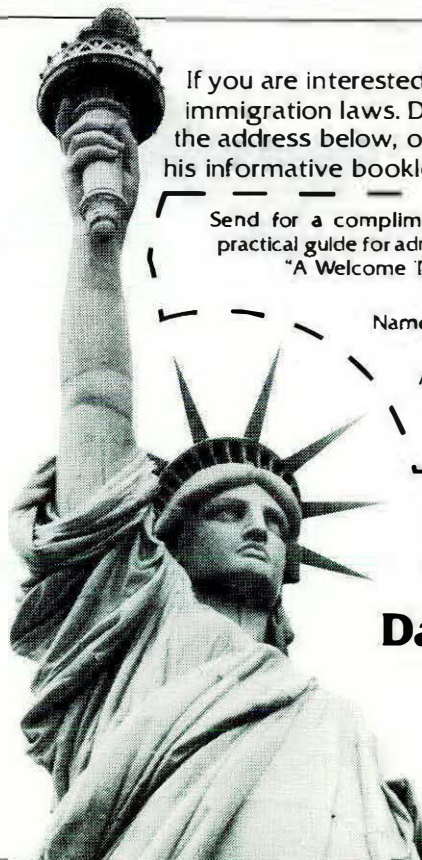
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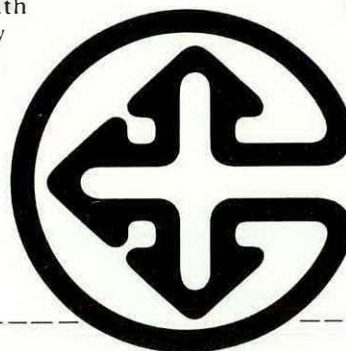
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## The Basic Issue

The Washington State Bar Association has earned a reputation within the legal profession nationally for being practical, innovative, and vigorous in the pursuit of its duties and in the performance of its responsibilities. While the Board of Governors theoretically guides the affairs of the Bar, our lofty standing must actually be taken as a direct reflection of the quality of our membership at large. When membership interest and participation have been required or requested to undertake tasks or resolve issues, they have been freely given. The depth and variety of talent and dedication among our members is amazing to behold, and is especially evident when the chips are really down.

To the extent that the State Bar has been responsible for raising and supporting professional standards in Washington State and nationally, it has been because we have not been willing to be content with a "caretaker" mentality. We have been leaders and activists, and on many fronts.

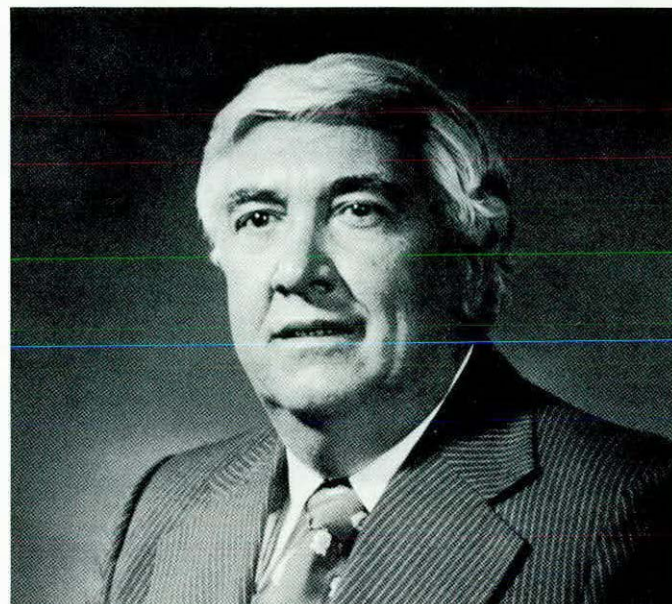
There is a significant difference, however, in the manner in which an organization can be active. We see some associations involved in a sort of "pop-activism" — so enthralled with *doing something* that the basic purposes of the organization are forgotten in the rush to gallop off in many directions.

The effectiveness of an association really lies in a constant effort not to stray from its basic purposes, no matter what activities it chooses to work through to accomplish them. If the Washington State Bar Association has enjoyed a measure of success in its performance and in the attainment of its reputation, it has been for that reason.

Many of the most significant activities of the State Bar over the past years have been directed at the maintenance and improvement of lawyer competence. There is no issue of more concern to the public than that. We have never for a moment forgotten our responsibilities to the public. There should be no issue of more concern to our members individually either.

Not every member has agreed every time with specific actions taken by the State Bar in these areas, even though they may agree with the concepts in theory. In fact, occasional protestations have been heard when some programs have been implemented such as mandatory continuing legal education, the trust account audit rule, and the close and scrupulous attention given to those who have violated the Code of Professional Responsibility. However, open debate is healthy and the success and acceptance of these programs now is almost universal within the membership. None of them are perfect but all of them are working.

We are, in truth, an organization of professionals whose common objectives and interests are directed toward improving the quality of services we render to



clients. We are also an organization in which participation by everyone — *everyone* — is encouraged toward accomplishing this goal.

Our intent — and our track record shows it — has not been to ride the wind in the hope that fate will guide us in the right direction, nor has it been to constantly tighten the screws of professional standards just to hear the anguished howls. However, we will never lose sight of our full intent to foster a very high standard of competence.

Where do you stand? Is competence high on your list of professional priorities? One purpose of this little message is to ask you to join us.

If you feel that you have some ideas or some time to contribute toward the future, tell the Board of Governors. Or indicate that you would like to serve on the committees of interest to you. Or stand for election to the Board of Governors. There are vacancies on the Board every year. The Board members are lawyers just like you who decided to contribute to the profession we all love in this way. The Bar is essentially governed by its members. The Board members are not only interested in listening to your ideas — they urge you to become involved in guiding the programs.

Improved competence — the delivery of quality service at a reasonable price — is the name of the game. The State Bar is the most effective avenue to accomplish that. A very wise philosopher once said, "It doesn't really matter whether you win or lose — the main thing is to be a player". To continue its standard of excellence, the State Bar needs players — please join the team.

## An Interview with the Deans of the State's Law Schools

# Legal Education in Washington

*[The following is a synthesis of excerpts from three separate interviews of the deans of Washington's three law schools edited by Steven H. Pond. Dean Theodore J. Clements of Gonzaga, Dean Wallace M. Rudolph of the University of Puget Sound, and Dean George Schatski, of the University of Washington. Interviewed respectively by David L. Broom, H. Eugene Quinn and James C. Middlebrooks, the Deans here give their observations on a number of topics of interest to both the academic and practicing legal communities. Since the date of the actual interviews, Dean Rudolph has returned to full time teaching. Donald S. Cohen is now serving as interim dean at UPS. - Ed.]*

**Many lawyers in the state believe the law schools have been enrolling and training far more persons than are needed to satisfy the demand for legal services. What, if anything, can you relate about your situation which may impact the "too many lawyers" issue?**

**Clements:** First of all, we have had a high degree of success placing our graduates in jobs. Nonetheless, we have been concerned that our enrollment has been too high in recent years when compared to our faculty, space and library resources. The student body has been as high as 1,000. It was determined in the Fall of 1978 to have an orderly reduction of that student body to 700 persons within the next three to four years. However, enrollments appear to be falling off at many law schools across the country. Since a high percentage of our applications come from out-of-state students, we are finding that fewer and fewer "accepted" applicants are showing up for the first day of class since they are apparently able to obtain admission to schools closer to their homes. Consequently, we believe that our student body will be re-

duced to about 600 and we will try to stay with that figure.

**Is there something magic about the figure 600?**

**Clements:** We feel that 600 is a good number considering our current financial resources, faculty, library and space. Another factor is that our night school, which we do not intend to phase out, nonetheless seems to have fewer and fewer enrollees each year.

**Rudolph:** From 1,500 to 2,000 applications received at UPS, we have an entering class in the day this year of 240 and then 65 in the evening.

**Do you have any kind of space limitation on numbers?**

**Rudolph:** We essentially are trying to stay at the size of 750 full-time equivalents. That's where we would cut them off if we had more applications. I think it's going to stay fairly steady at this point. The number of people taking the LSAT nationally has dropped from about 150,000 to 120,000. I don't expect that to change very much and there are now about 35,000 seats in the country in ABA approved schools. I don't expect that to increase in the future and I think the applications and the seats will probably stay at about the same level.

**What percentage of your graduates do you feel will get legally oriented jobs?**

**Clements:** We do know that a certain percentage of our students go into business, insurance and other fields. We cannot state that they are entering those fields by choice. There is a possibility that some graduates entering non-legal fields are doing so as a matter of second or third choice. We simply do not have statistics on this. We do know that we have been successful in placing a high percentage of our graduates in legal jobs.

**Rudolph:** All our past experience has been that about 95% of [our graduates] get legally oriented jobs. When

I give these figures, these are figures within six months of the passage of the Bar. They do not include people that do not pass the Bar but the figures that we've had on our placement in the past has been that 95% have law or law related jobs within six months. We keep pretty good tabs on this.

**What are the long range prospects for law graduates and their job possibilities?**

**Rudolph:** Well, I know the Bar has worried about it a great deal. But if in fact you analyze the figures, we're talking about 35,000 graduating a year nationally, and you have 10,000 lawyers retiring a year. That leaves a net increase of 25,000 lawyers a year for the nation. Based on the fact there are now 600,000 lawyers, you're talking about a 4% increase in the population of lawyers. I really think the legal profession will absorb that. Now, what's happened in the last ten years is of course that the law profession doubled or more than doubled and therefore obviously there had been a substantial shortage of lawyers. There's no longer, obviously, a shortage but I think an increase of 3% to 4% a year will be absorbed and that's what I expect. There won't be anymore dramatic increases and I don't think there will be any dramatic decreases.

**But if in fact we do reach a situation where we have an overabundance of lawyers, do you think the law schools have an obligation to decrease their enrollment?**

**Rudolph:** No. I don't think that educational institutions should act as trade barriers for the profession. I think that if people won't earn a living, and we certainly saw the scare tactics in the national magazines last year which did cut back applications, that people will decide not to go into law. I don't think we should sit as educational institutions and say we have to protect the numbers. What's really happened obviously is that the pay of beginning lawyers has decreased. Five years ago the average student coming out of law school in this market was probably getting \$13,000 as a starting pay in the smaller firms; in the larger firms it was more, and it is still only \$13,000. So with a 10% inflation you've seen probably a 30% reduction in starting pay. Now that is what's going to control the entering into the field.

**You think the law of supply and demand will take care of it?**

**Rudolph:** I don't see why the law is really any different than any other field. The problem is that lawyers have all been worried but I think they have been doing quite well. Most lawyers I talk to are terribly worried but when I ask them how busy they are, they're too busy and they don't have enough time to do all their work. So I think it's an unfounded fear. If we had something like the 1930 de-



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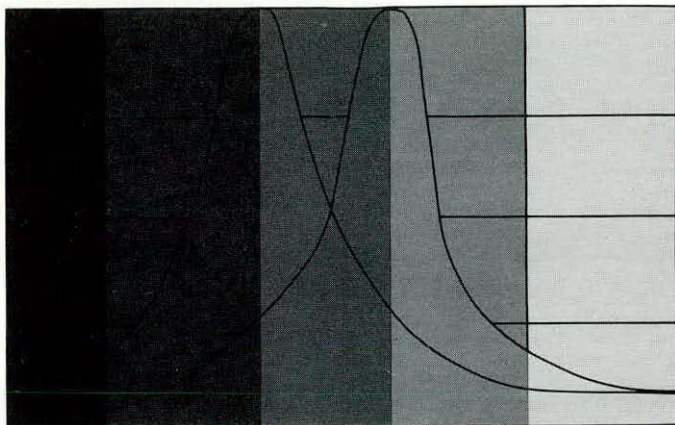
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pression, then I would be very fearful but that again wouldn't have anything to do with the supply coming in. It would be a tremendous shift against lawyers and the demand for lawyer's services and that would be pretty disastrous. But the nice thing about legal education is that if people don't find they are making a living at that, they generally can find something else that is equally remunerative.

### **Do you think there will be a dramatic increase in women lawyers?**

**Rudolph:** Well, that's obvious; that's one of the things that's happening in our society. Twenty years from now we won't have to be worrying about affirmative action on judges and so forth. The number of women that will be in the profession who will be qualified for those positions will be immense, and of course I think our whole society is going to be different. This year was the first year there were more women in college than men and we've been running nationally around 30% to 40% women law students now. Assuming you have some attrition because some women will choose not to stay with the profession, in the long run probably 25% of your profession is going to be women. This means that there will be other areas that lawyers will be involved with in traditional law. I think a good part of the government (and you hate to use the word "bureaucracy") are going to be lawyers and a good number of those will be women lawyers as well. The straight private practice probably will shrink to maybe 40% instead of 50% of the market.

**Schatski:** This year's freshman class has over 46% women. I think our overall student population now approaches between 35 and 40%, and I assume that the overall number will increase. Whether the next year's entering class will be 46% again, I don't know. I wouldn't be at all surprised to see it approach 50 - 50 eventually. I think we are approaching the point where women do understand that they can go to law school and that law is a career they can pursue. I don't think we're there. I think women believe that it may be harder for them to get into law schools because they are women. I can't speak for other law schools, but I know that is not true here. I believe that women law students believe that it is harder for them to get jobs when they leave here and there is some evidence to support that suspicion. But it is also true that's changing. The problems of finding jobs are becoming less and less a unique problem to women—that is that their problems are becoming more and more like everyone else's problems and there is less and less sex discrimination. But I suspect there is still a fair amount of it going on. I can't prove it, but I suspect it.

**Law schools have been criticized in recent years for their failure to involve students in practical "real**

world" experiences. Without getting into the fairness of that criticism, what do you offer in terms of a clinical education?

**Clements:** We have more than 70 students involved in "out placement" programs for which they receive academic credit. These include work in our own Legal Services Office, and assignments to the Public Defender, Prosecutor, and various courts and other public offices. In addition, a large number of our students clerk and intern for Spokane area law firms. We emphasize trial and appellate advocacy. Currently there are two full-time professors and four adjunct professors assigned to that program. Two of the latter are judges.

**Rudolph:** We're working very hard in this area. We have a skills training program beginning the first year which is a standard legal writing program which includes appellate argument and appellate briefing. We're starting an experimental course in the second year in negotiations, drafting and counseling that some students will take, but if it works out, everybody will take. In the third year we have a trial practice program in criminal and civil litigation and we have hired a clinical director. Next year we will start a clinical program which will be dealing with the live case. One of the problems with clinical programs has been trying to do everything in the clinical program. We expect students to have the skills to deal

with litigation when they get into the clinical program [rather than using] the clinical program to teach them litigation skills.

#### Will all students go through this clinical program?

**Rudolph:** Not all. We won't be able to put all the students through the last part because that's terribly expensive. I see three specialties or areas of concentration out of this law school: tax and business; trial practice and possibly government and administrative training. We won't be giving any kind of specialty degrees but we will say here are areas of concentration so students who think they want to be in trial practice and have done all the prerequisites will be the ones who will be given the first choice in the clinical programs.

**Schatski:** I have a pretty broad view of what [clinical education] means. It involves a large number of different kinds of programs. It involves simulated experiences in law school. It involves real experiences supervised inside the law school. It involves experiences outside the law school, either on a part-time or even possibly on a full time basis. I think that clinical education offers the potential, at least theoretically, for obtaining a whole lot of objectives. I think in reality there's one objective that's easily obtained in clinical education, and that is to give the students a context that they can relate to so that they have a better idea of what the rest of law school is about.

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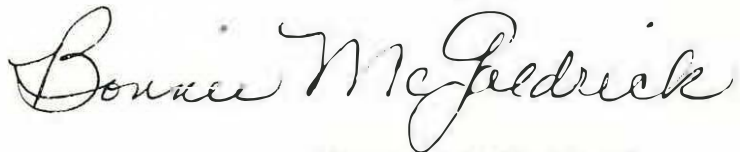
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My own sense is that most law students go through law school somewhat confused as to what the whole enterprise is. While they learn a great deal, they are never very confident that they are learning very much and the chances are quite good that they would learn much more if they had that confidence or clarity of purpose, clarity in a sense of relationship to the work.

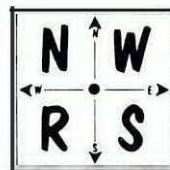
**Does the University of Washington law school have any programs that would fit within this broad definition?**

**Schatski:** Yes, we do. We have one full fledged in-house clinical program that involves eight students at any given time and they represent criminal defendants in misdemeanor cases. The whole works, from meeting the client, interviewing clients and witnesses, negotiating with the prosecuting attorneys, trying cases . . . the whole business. That is supervised by one tenured member of the faculty and a full-time attorney. My sense is that it's going very very well. Combined with that course, or the program, are some classroom experiences, so that the students aren't just in front of this clinical context without being forced to go back to think about what's happening both in substantive matters and procedural matters and technical questions and the like. In addition to that, we have inside the law school, some problem-method courses, which I characterize as kind of a natural link between the traditional Socratic case method and real clinical education — real-life, real-client clinical education. It isn't quite simulation, which gets into role playing, but it throws them into a real life problem. Again, I think that's a very good way to get the students' attention, give them a better appreciation of what's really going on in law school. We have a few extern programs. We have, over the last year or two, had someone working full-time as a clerk for Judge Wright, Eugene Wright on the 9th Circuit. I hope that kind of program can be expanded. We have to be careful with those kinds of programs because we want to make sure that the people who are involved . . . well, when I say the people involved . . . the teachers involved are people who will take a little time to educate and not just use our students to get some of the work out. There's a belief that if the students just are doing things they will learn something . . . there's no question in my mind they will learn something. But whether it's good is a doubtful proposition and it certainly isn't maximizing their potential to learn. So we want some assurances from people that if we give credits to students for experiences away from school, that the lawyers involved will stand back and make an effort to educate them while they're going about their work. This may mean some of the more interesting work to do. In Judge Wright's case, just by the luck of the draw, there's going to be a lot of interesting, challenging work going on in his office. There are a lot of

things lawyers do that don't involve much intellectual challenge and those are things that all lawyers have to do and I don't want to protect our students from that knowledge or that exposure. But I want them to be learning. We're working in the direction of a series of opportunities for our students to pick up a few credits . . . like three or four credits . . . while they do work in certain offices. Again, we're in the process of negotiating with those offices to assure that the students will be supervised by lawyers who are capable of being good teachers and who desire to be good teachers.

**Should there be some type of more formal internship programs following graduation from law school? Some form of internship program that continues on with the extra year or two years?**

**Clements:** Such programs would be helpful, but right now there are so many drawbacks that I doubt they would be practical. For instance, the additional financial burden placed on our students, who already pay very high tuition, might be too much. Such programs would also require a tremendous commitment from law firms. We think that a better means to the same end is to strengthen third year law school clinical programs. I feel the standard law school curriculum could stand a greatly expanded clinical experience in the third year.



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**Schatski:** Maybe it would work now, but you know this has been tried in several states and it never works because what happens is that there is a serious sense of exploitation. When I say that I don't mean people doing work for less money than they ought to get. I'm talking about exploitation in the sense that the experiences that the clerks had (that's what they are called in the states that have done this) were not good ones. Many of these young lawyers, these recently graduated students are put to work doing the most menial kinds of jobs, not jobs calculated to educate.

In medicine, you have hospitals, institutions out there that exist partly for the purpose of educating young doctors, interns and residents. The nomenclature is there. Teaching hospitals and people who work in those hospitals who are established doctors understand that part of the institution's obligation is to educate new doctors. There is no such tradition in law. We have a lot of people coming out of law school every year and at least for the time being the proportions are much higher in terms of the ratio of graduates to lawyers than is true in the medical profession. So it's a little harder for the lawyers to absorb that many clerks.

Now, I understand the other side. The kids come out of law school and they really aren't ready to practice law. They're really not ready to represent people. I just don't

believe that merely putting students out there [in an intern situation] without any real supervision is going to work.

**Rudolph:** I'm not too sure that [an internship would be] terribly useful. We've developed in our CLE program a trial college for lawyers and I think there should be other types of educational programs available as opposed to internships. The problems of internships as they worked in New Jersey is just a method of getting cheap labor. You would have a supervisory problem of saying whether education is going on or not . . . Quality control in legal training is the real essence of any of it and it is very expensive.

#### What about clerking?

**Rudolph:** Well, students like to do it; I suppose they need the money and I think they do learn something from it. I know a lot of law school deans or a lot of law school professors think the students shouldn't be working as much. We do have a restriction supposedly of 15 hours a week.

#### What do you see as the role of a law school in the matter of continuing legal education for lawyers?

**Clements:** Our school is in a unique position to be of service to the Bar. Certain of our faculty are particularly interested in planning and participating in CLE programs. We have a traditional yearly Tax Institute and other varied subject matter programs for attorneys during the year. In addition, we have instituted "mini-courses" which are held during noon hours and in the evenings. These include Advance Sheet reviews with Judge Willard Roe and Professor Joe Nappie. In addition, we intend to have at least one program per year of national import such as our National Symposium on Campaign Financing. These programs will serve to broaden the spectrum of education available to the Bar and will no doubt add to the prestige and stature of our school.

**Schatski:** I don't have any doubt at all that we ought to be involved [in CLE] in some sense in the planning stages and some other conceptual stages because our business is education and we may have some ideas that can be helpful. I don't have any doubt at all that there will be some programs that law schools will put on just because the nature of the program is close enough to what the law schools are doing, that they can do it more comfortably or efficiently than it can be done anywhere else. I think that individual members of the faculty will continue to play a role in some continuing legal education programs. I don't know what number it is here, but there's a large number of faculty members that do participate in different legal programs. And, I think that all of those relationships should continue. My own sense, though, is that

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the law school ought not to lose sight of what I think are two primary functions in order to pick up new ones. There's nothing wrong with picking up new ones if they don't dilute the first two. It seems to me that the most important function is to educate the students who are in a law school. The second most important function is to step back a little bit from the hurley burley of everyday life and look at law and legal systems, and comment through scholarship on that law and on the legal systems in a way that gives perspective. We know that most people in life don't have the time to step back and in a sense that's the role that academics have taken for themselves and that society expects of them. Now, those two functions it seems to me, we have to do, because we're the only ones who are going to do them. At this time beyond that for us to meet some other functions in society is all well and good. And in fact, we do it. We advise legislators, we advise lawyers, we engage in continuing legal education, we engage in other kinds of *pro bono* work, and I think we should. But I don't think we should lose sight of the fact that the first two obligations are musts, in terms of what we're about.

**Rudolph:** Well, we've felt it's a terribly important area and when I came here we established a diversified continuing legal education program. The standard seminar type, we've run about eight of them a year. We don't

expect to have the broad numbers that the Bar Association does. We usually try to get about 100 to 125 people and we try to do a superior job with that. We've also had these week long programs which I think are very effective. I'm going to one on anti-trust next week. That happened to be in Hawaii. We've run them in different places. You do have to get the lawyers away from their offices for that purpose. Then we've run a trial college which has eight days, very intensive work all day long.

**Do you feel that the current requirement that lawyers have to get 15 credit hours a year to keep their practice is valid?**

**Rudolph:** Well, probably yes. My difficulty with continuing legal education at this point is not the requirement; it's that it is not terribly well supervised and I don't think that sitting in a room does much. We're going to have to come up with some kind of method of testing whether they've learned anything, and that itself may be more important than the hours. That's a difficult problem. I'm not sure a lot of learning goes on. Now if you say a lot of learning doesn't go on and then you require people to do 15 hours of it, then you may have some problems with that. I don't think the idea of continuing education and a required continuing improvement of professional skills is a bad idea. □

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## The Washington Law Clerk Program

[The law clerk program in the State of Washington is little used and little understood by the Bar. The following articles by law clerk Jonathan Martin and his Yakima attorney-tutor Randy Marquis give two perspectives of this alternative to law school. — Ed.]

### Reading Law — Admission by the Ancient Means

By Jonathan H. Martin

Often, I am asked what it is really like to read law under APR 2(D), and if it is working and worth it.

To begin with, in this program, one learns many of the *practical* aspects of practice at the same time he is learning the broad, underlying principles of law. The method is quite the reverse of law school and its rather abstract "Socratic dialogue" where one first learns the theory, and then, over the course of several years following admission to the bar, the practical applications. Under APR 2(D), one learns the law by doing, shall we say, the actual deeds: client interviews, research, and the like. Law schools generally do not teach the mechanics of recording a deed, the individual traits of various judges, or how to extract data from reluctant clients. When you work with these problems every day, you are bound to learn.

If the prospective clerk has not had any legal background, he or she will probably have to eat, sleep,

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### Law Clerk Program — The No Nonsense Legal Education

By Randall L. Marquis

"May it please the Court, I am George Goodfellow, Legal Intern. My supervising attorney is James Lawman. I represent the Plaintiff." Thus begins a rather unusual trial wherein "counsel" for the Plaintiff has never taken a bar examination, never graduated from law school (nor has he attended one), has only been inside a courtroom once before, and the supervising attorney is out of town.

Is this a 16th century scenario? Or perhaps a lawsuit venued in some foreign land? Is it a make-believe skit?

Not at all.

This is all very legal and proper in the State of Washington in 1980. Counsel is a registered law clerk under Rule 2 of the Admission to Practice Rules (APR) of the Washington Court Rules and has been granted a license by the Washington State Supreme Court entitling him to the limited practice of law under Rule 9 of said rules. He has completed three years of a four year pro-

and dream law, twenty-four hours a day. Not only will he or she have to hold a full time job, utterly permeated with law, but will also have to learn an entire system of philosophy, together with its history and underlying principles. To do all of this at once takes signal dedication without which the program utterly fails.

APR 2(D) sets forth the requirements for reading law as an approach to the bar; perhaps a brief outline is in order.

2(D) (1) provides that the clerk must be a bona fide resident of the State of Washington, and must hold a degree, other than a Bachelor of Law, from a four year college.

2(D) (2) requires that the clerk shall be employed by a judge of a court of record or a practicing lawyer of ten years experience on a full time basis. The supervising attorney shall not have been disciplined by the bar. This section also enables the Board of Governors to require quite detailed application by both parties and to investigate the information provided.

2(D) (3) provides the general framework of instruction, and for monthly "mini-bar" exams to be administered by the supervising attorney. It also defines full time employment for purposes of 2(D), and requires monthly certificates of compliance.

2(D) (4) allows the Board of Governors to require the

gram of work and study in a law office, but his work has never been reviewed by anyone other than his attorney-tutor. His courtroom training has been minimal, i.e. sitting in with his supervising attorney in a previous twenty minute trial in District Justice Court. But he possesses a license to try cases by himself in District Justice Court or in any court where judgment is subject to trial de novo.

"Counsel, I have read the pleadings and this case is rather complicated. Pursuant to Rule 9, I'm ordering that this case be continued and tried in the presence of your supervising attorney."

Thus his honor insists that the safeguard of Rule 9 be employed in order to assure an orderly trial to protect clients and witnesses and perhaps to save time.

### How Does the Law Clerk Program Operate?

"Every person who desires subsequently to qualify as a general applicant for admission to practice in the State of Washington, without having graduated from an approved law school, shall register as a law clerk . . . " *APR 2D, Washington Court Rules.*

What is a law clerk?

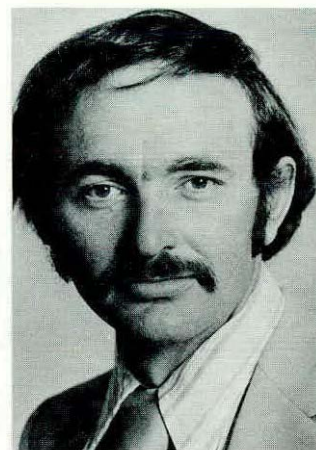
What is the difference between a law clerk and a legal intern?

study of certain materials and fields. (Curiously, the Board has not yet seen fit to do so.)

2(D) (5) permits the Board of Governors to grant advanced standing to the clerk for law school attendance prior to making application.

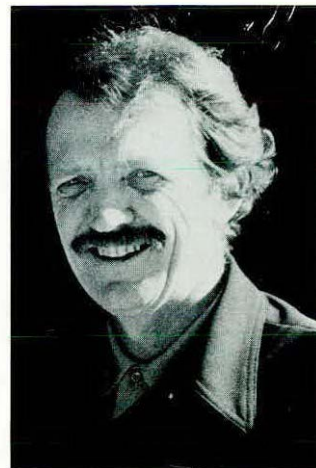
2(D) (6) is a grandfather clause.

APR 9, the legal internship rule, specifically applies to law clerks studying under APR 2(D) who have completed three quarters of the program (including allow-



*Jonathan H. Martin is a University of Washington graduate who attended Willamette University College of Law from 1969 to 1971. He began work for Martin and Marquis under APR 2(D) (4) in 1977 after a hiatus of several years and was admitted to limited practice in 1979 under APR 9. He plans to sit for the July, 1980 bar examination.*

A law clerk is a man or woman who has completed his undergraduate work in a four year accredited college or university and has applied and been accepted by the Board of Governors of the Washington State Bar Association for employment and study under a judge of a court of record or an attorney in good standing who has been a member of the Washington Bar for at least ten years. He or she works and/or studies for at least thirty hours per week, at least forty-eight weeks per year. He takes at least



*Randall L. Marquis is a 1964 graduate of the University of Washington School of Law. He is a partner in the Yakima law firm of Martin & Marquis, where he has been engaged in the general practice of law for the past 14 years.*

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ance for advance standing).

The general framework set up under the rule for reading law is really quite simple; within the broad parameters set forth, the clerk and his supervisor are free, and expected, to construct their individual program of preparation. The ultimate responsibility is, of course, also theirs; there is no one to blame for failure save themselves.

Many firms are now employing paraprofessionals to handle much of the mechanical detail involved in the practice of law; the registered law clerk is, in actual practice, a paraprofessional of the first water. He may begin as a paraprofessional, but with advancement through the program, should acquire greater duties and responsibility than a paraprofessional, and become of a constantly increasing value to his firm. At the climax of the program passage of the bar exam puberty rite he should at least be as valuable, and more functional than an attorney newly admitted to the bar directly from law school. At least he will know where the courthouse is.

I had two years of law school at Willamette some years before I began to read law, and was granted advanced standing. The background in theory and research methods has paid off immensely for me. I found that after a few weeks on the job, what I had learned in law school surfaced again; the lessons were enhanced by the actual

one written examination every month, administered by his tutor (the said judge or attorney) which exam is filed with the Board of Governors together with the written comments of the tutor. (He neither passes nor fails any exam.)

His tutor has agreed to faithfully instruct the law clerk in "the branches of the law prescribed by the course of study adopted by the Board of Governors. No person is eligible to act as tutor while disciplinary proceedings are pending against him or her or if he has ever been "censured, reprimanded, suspended, or disbarred."

The legal intern is a different species although he may be a law clerk as well. He has satisfactorily completed two years of law school or three years as a law clerk. He has the blessing of his tutor or law school dean. He has a supervising attorney who is an active member of the Washington Bar and who has been actively engaged in the practice of law "in the state of Washington or elsewhere" for at least three years when the application is filed.

Ordinarily, an attorney may not be a supervising attorney if he fails to meet the requirements of tutors relating to censure and the like, or if he is, or within twelve months prior to application therefor has been, the subject of any complaint received by the Washington State Bar Association which has not been resolved in the attorney's

application to real life.

The first few months of my endeavor were spent mainly in mechanical functions, such as filling out forms, filing papers, calculating figures, and the like, with the almost constant supervision of one or more of the attorneys in the office. The attorneys and I soon discovered that I recalled the basic methods of research, and the use of reference materials although to be honest, I often had trouble defining the real issue.

As a result, most of my first year of reading law was spent in research and as a "go-fer". There was little, if any, direct client contact. An attorney would give me an assignment for research and investigation, often with a deadline only hours away. I was then to prepare an in-office memo on which he would base his argument or support his position. Usually, after the attorney had scanned the memo, there would be a sort of oral examination, a cross-examination, if you will, on the question. This served two purposes: it was a check on thoroughness, and helped both the attorney and me to discover additional points to follow up on; it also served to make sure that the possible stand of the opposition had been studied for weaknesses and strengths. Although I sometimes felt like a first-year law student caught napping in class, these grillings were essential in teaching thoroughness and the importance of bringing the law down to date; they were

favor.

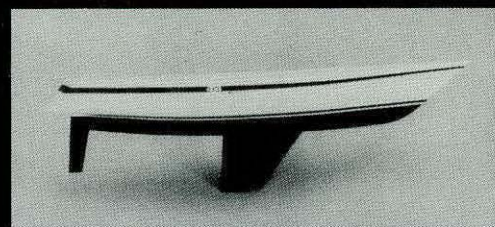
Presently there are about fifteen registered law clerks in the State of Washington. Of those about half are progressing in the program in a continuous uninterrupted fashion. Why is the number so small when there are more than 100 times as many law students currently registered in the three law schools in the State of Washington? Why do law firms recruit paralegals and legal assistants routinely, pay them substantial salaries in dead-end jobs when they could hire law clerks who could work their way up a career ladder to legal intern and ultimately attorney? Perhaps law firms are not generally familiar with the law clerk program. Perhaps there is a feeling that the burden of tutoring, including administering written exams once a month, is too great to bear.

Does the law clerk program make sense for a small firm?

I can tell you what my experience has been in a two attorney firm in Yakima, Washington.

Jon Martin came to us in the spring of 1977 offering his services as a law clerk. His qualifications — two years at Willamette Law School, undergraduate degree in history, age 32.

I agreed to be his tutor. We put him to work on a variety of tasks that offered minimal challenge — such as collections, evictions, car repair complaints, and the like. We



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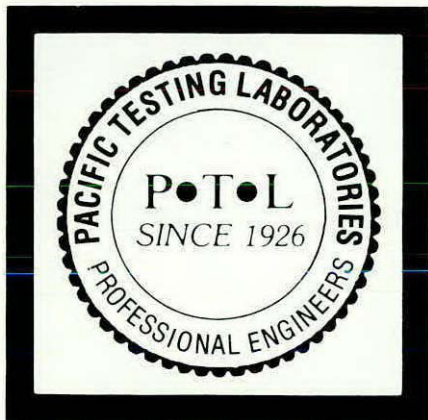
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invaluable for both the attorney and myself to pick out changes in the law and ancient cases that might clinch the argument.

Clear communication is essential to the program. Occasionally, either due to the press of time or the making of assumptions as to my knowledge of the data, the attorney would only give partial information on what was wanted; the result was usually frayed tempers or utter frustration. I cannot overemphasize the necessity of clear communication both to the supervising attorneys and to the law clerks.

During the second year of the program, these in-office memos became the essence of briefs which were to be submitted to the courts and used in trials and hearings by the supervising attorney; gradually greater responsibility devolved on me for their contents. My opinion came to be of value to the firm as one who was at least moderately conversant in the law.

On occasion, I would be asked to sit in on attorney-client conferences to gather my own data for research and investigation. My status was always explained, of course, to the client, who could request that I have nothing to do with the case. This only happened once, due to a run-in that the particular client and I had had several years before. I also began the process of developing my own lines of communication with judges in both

also started him on legal memoranda and briefing. Within a few months, he was earning his keep. Later we assigned him simple criminal and tort cases including the drafting of pleadings and motions. He was given at least one written exam every month. The exams generally consisted of one problem, allowing forty minutes to one hour for the exam.

During the first eighteen months we covered civil procedure, criminal law, contracts, torts, personal and real property, and most of the subjects generally covered in the first year of law school. We gradually increased the level of difficulty of assignments with a smattering of probate, real estate closings, dissolutions, contracts, landlord tenant problems.

But the exciting step came in May, 1979 at the end of twenty-four months of work and study. We applied through the Board of Governors to the Supreme Court to have Jon admitted as a legal intern under Rule 9. He was then granted a license for limited practice in the Washington Courts under a new set of rules. Under the rules, the intern, so long as he performs satisfactorily in the law clerk program, retains his license for a period of eighteen months (subject to revocation by his supervising attorney, the Board of Governors or the Supreme Court). He now has the right to prepare cases, interview clients in the absence of the supervising attorney, and,

state and federal courts, and attorneys outside of the firm.

I have since been admitted to limited practice of law under APR 9 as a legal intern. Within the careful limits of that rule, I now have full responsibility for a case, from initial client interview to the actual trial. Again, of course, my status is explained, and the client is given every opportunity to request the services of a fully admitted attorney whenever he should desire; I often consult with Randy Marquis, my tutor and supervising attorney for advice as to the best means of approach.

Although I am currently a legal intern, the full program of study and examination delineated by APR 2(D) is followed, and will be until I actually take the bar this summer.

The monthly "mini-bars" continue unabated, and still serve as training for the big one, and to give Randy a chance to find weaknesses to be attacked by more intense study and practice.

Quite obviously, having a registered law clerk reading under him puts a tremendous burden on the supervising attorney. Many hours of his time, and much difficult thought go into developing and tailoring the program to achieve the ultimate goal of getting the clerk admitted to the bar. A great deal of attention must be paid to developing the program of study and teaching the practical prac-

following a period of on the job training, that is, "in-court supervision, which shall be not less than one occasion in both jury and non-jury trials," to try cases in inferior courts out of the presence of the supervising attorney except where there is a right to appeal by trial de novo or in preliminary criminal hearings.

In California and some other states, legal interns are not permitted to try criminal cases in the absence of a supervising attorney on the theory that this would be a denial of the right to counsel. Although the Washington Supreme Court holds that the right to appeal de novo is an adequate safeguard to the accused, we do have a provision under Rule 9 which requires that the supervising attorney be present at all preliminary criminal proceedings.

Is the legal intern qualified to try cases under these circumstances? The real question is, is he any less qualified than a law school graduate who, having passed the "Bar", goes into a courtroom for the first time? Did that elementary course in Trial and Appellate Practice a year and one-half before, during the attorney's second year at law school, qualify him as a trial attorney? Is the green attorney fresh from the State Bar exam any more qualified to try a case than a legal intern coming up through the ranks, working inside a going law firm day in and day out for three full years?

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tice of law. The supervising attorney must do this in addition to keeping his own practice viable. I know full well that this has not always been easy for Randy; as a result, I have the greatest respect for him, in spite of occasional differences. I would also say that if you were considering taking on a clerk under APR 2(D), you should really examine both your motivation and ability to handle the strain.

To succeed in his apprenticeship, the clerk must be prepared for a long, often frustrating and difficult period of hard and constant work in the law, without the benefit of peer pressure and professors. Although one may absorb a great deal during the working day, he still is going to have to be willing to review and study law on his own time.

Even if one has attended law school, he is certain to find the apprenticeship difficult, and, in many ways, far harder than law school. Not only must he do everything he would have to do in law school, but he will have a full time job also. A great deal of dedication is required.

The most basic prerequisite for success in reading law, however, is applied intelligence. Although the four year college degree requirement helps to assure that no registered clerk is going to be an idiot, the prospective supervising attorney should satisfy himself that the candidate possesses a certain sense of logic, an ability to think

Rule 9 requires the supervising attorney, who must have completed at least three years as a member of the Washington Bar, to approve all written pleadings, motions, briefs and the like executed by a legal intern. Perhaps Washington judges would welcome such a requirement for all fledgling counsel.

The law clerk program with its intern aspect raises many questions — not all of which can be fully answered.

Is the public adequately protected from legal interns? The rule requires that the client be informed of the status of the intern and further that the client agree to be represented by him or her. If Joe Intern is designated on the letterhead as such, is the requirement met?

How do you fix fees for work performed by the legal intern?

Can you charge \$50 to \$60 per hour? Does it vary depending upon the type of work? \$20/hour for briefing? \$40/hour for appearance in court? \$50/hour for probate work? Or should it be a straight percentage, say 70% of the attorney rates in the office?

What type of work to assign to the legal intern? The rules say he can handle any *ex parte* matter in court in the absence of his supervising attorney. What about that million dollar probate? Does it make a difference if he has never been examined on probate law?



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quickly, and an excellent command of the English language, and other characteristics he believes to be important to the practice of law.

Because the relationship between the clerk and the tutor is bound to be a close one, both should look for those characteristics that they would seek in a partner or associate. Personal compatibility is of paramount importance; without it, the program is doomed from the start. Nevertheless, both should bear in mind that some clashes are inevitable.

From my perspective, the acceptance of what I am doing has simply been amazing; members of the bench and bar have been extremely considerate, and more than a little curious as to what I am doing. Many of these people have gone far out of their way to give valuable advice and aid. With one exception, a member of the Oregon bar, lawyers and judges have extended all of the usual professional courtesies and considerations to me. The general acceptance by clients has also been excellent, to the point where I have had to caution them again and again as to my status.

My biggest problem has been keeping my mind on the law, and living with frustration and annoyance. Because lawyers tend to be an independent lot, somewhat given to doing things their own way, Randy and I have had our share of disagreements, rather more over minor details

What about errors and omissions insurance? Is this a must for an office employing a law clerk or intern?

Washington is one of seven states that still has the law clerk program. Does it make sense? Is it outmoded? If a law clerk passes the bar, is he just as much a lawyer as a graduate of an accredited law school? Can the program be justified?

I submit that the law clerk program is not only fully justified but that its abolition in some states should be questioned.

Reading the law is the ancient and time honored system of training lawyers.

The clerk learns from the tutor and the tutor learns from the clerk. The very act of tutoring forces a practicing attorney to stay on his toes. The clerk is a paralegal in the purest sense of the term. The clerk is highly motivated. He or she performs at a greater level of difficulty than the usual paralegal or legal assistant. He relieves the practicing attorney from routine tasks thereby helping to raise the efficiency level of the law office. He cares about the client and the law as he is more attorney than clerk. In contrast to the garden variety paralegal, he is heavily involved with the Bar Association and the law as well as bound by the code of professional ethics. He should be protected as are other endangered species. □

than general approaches.

Ever so often, people propose doing away with APR 2(D). Currently, their argument seems to be based on the fact that there is already an abundant supply of lawyers provided by the law schools. While I certainly do not deny this, I don't think that cutting off APR 2(D) is going to help stem the tide. Out of the hundreds of people taking the Washington bar every year, no more than three or four are going to have studied under the rule.

Furthermore, the requirements of the rule are such that very few are going to qualify and succeed; there are far easier ways to make a living. The Board of Governors may also tighten these requirements at will. There is little danger of the rule becoming some sort of floodgate.

The rule presents an opportunity for the admission of those people for whom, for whatever reason, law school is not appropriate. Once they pass the bar, these people often become excellent attorneys, and provide a valuable leaven in the profession.

The survivors of APR 2(D) are often highly qualified practitioners who have produced for themselves, their clients, the profession, and their firms from the moment they are sworn.

Thus, APR 2(D) should be preserved as an alternative; people considering it should be fully aware that it is not easy. ☐

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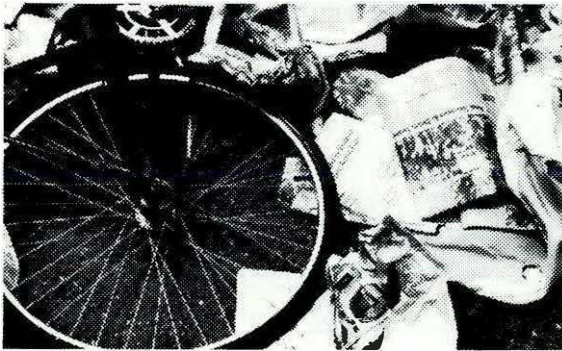
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# Too Many Lawyers in Washington?

## (Or, Where Have All the New Lawyers Gone?)

By BRIAN L. COMSTOCK

**At the outset, it would be helpful to know exactly how fast we are growing as a practicing bar. What statistics are available on this subject?**

It is generally assumed without question that our lawyer population in the state of Washington is increasing at a rapid rate. Oddly enough, no one seems to be keeping accurate count of exactly how fast we may be growing. We know, of course, the number of lawyers admitted to practice each year, and that number has been on the increase. What is missing is any systematic recording of information on the numbers of lawyers who each year have left practice, voluntarily or involuntarily, who may have moved to another jurisdiction, or who, like old soldiers, have just faded away. In 1977, someone counted all of the attorneys in the state bar directory and concluded that at that time we had a total of approximately 6,471 practicing attorneys. The bar association's newly computerized membership list may provide a more accurate account than has heretofore been available.

**But surely the increase must be substantial. The hundreds admitted to practice after each bar exam has led most of us to believe the market is being flooded with new lawyers.**

True, the number of new lawyers admitted each year has steadily increased. But perhaps the increase is not so great as most of us would suppose. Here are some figures

showing the trend over the past six years:

| Year | Admittees |
|------|-----------|
| 1974 | 536       |
| 1975 | 634       |
| 1976 | 765       |
| 1977 | 700       |
| 1978 | 766       |
| 1979 | 798       |

As you will note, the biggest jump came in 1975 and 1976. This reflected the addition of the first graduating class from UPS. This was followed by a slight drop in 1977 which may be attributed to a prior reduction in class sizes at our three state law schools.

*Brian L. Comstock is managing partner of Roberts, Sheffelman, Lawrence, Gay & Moch, and a 1959 graduate of the Harvard Law School. In 1976, he chaired a Task Force on Lawyer Placement sponsored by the Seattle-King County Bar Association, and he has served as a trustee of that bar association.*



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**What about the number of lawyers in relation to statewide population?**

In 1977, the state bar compiled figures showing lawyer/population ratios for each county and the state as a whole. The statewide ratio was 1 lawyer for every 555 residents. As might be expected, our metropolitan areas had a much higher concentration of lawyers. King County, with one-third of the state's population, had more than half of all of the attorneys, and a ratio of 331 people per lawyer. Thurston County had the highest proportion of legal types, with 1 lawyer for every 301 residents.

By comparison, in 1977 California had a lawyer/population ratio of 1 to 1,076. Metropolitan areas, such as Orange County and San Diego County, came up with ratios of 1:685 and 1:558. Thus, if California can ever be deemed an appropriate reference point, we may indeed be somewhat "over-lawyered" in the state of Washington.

**All of this seems inconclusive. Trends and comparisons only skirt the critical issue — which has something to do with our having too many/too few lawyers here in the state of Washington. How can we best judge that issue?**

Here is where the practical and moral considerations come into play.

First of all, we probably have too many lawyers if, as a matter of fact, significant numbers of our members are either underemployed or unable to find fulfilling law-related employment. Here, as I will explain, the facts are equally hard to get at.

Secondly, we must consider whether as a profession we are adequately meeting all of the present and prospective needs of the community for legal services. This is a subject worthy of in-depth treatment. For the present, it will suffice to observe that, even with federally funded programs, the poor do not receive the legal services they need. We are finding that the "above-poverty-level" groups may fare even worse. The most common complaint of businessmen is that lawyers do not respond and do not get the work out. Then there is the seemingly unsolvable problem of court congestion.

**Admittedly, we are not solving all of the problems of the profession. But what about actual workloads? Given our comparatively large number of attorneys, is there really enough profitable business to be around?**

While I can find no statistical evidence bearing on this question, my personal observation is that lawyers generally are working about as hard as they ever did. My hunch is that the work product per lawyer has greatly increased in recent years because of technological advances, better use of associates, and greater reliance on clerks and paralegals. Law firms are going through a definite

growth cycle, and mergers, as a shortcut to further growth, are becoming more and more common. These factors and others would tend to the conclusion that the overall volume of legal work is expanding. The extent to which all lawyers can or will effectively compete for new business, and thus remain individually productive, remains to be seen.

**If there is potentially more than enough legal work to go around why are so many of our new lawyers finding it difficult, if not impossible, to find suitable employment?**

Even though legal business is expanding, a number of factors could explain why new lawyers are not being absorbed as rapidly as they come on the market. Inflation is one obvious factor. Major firms in Seattle are hiring third-year law students at a starting wage, next summer, of \$24,000 per year. This sets the pace for other firms desiring to compete for talent and has a radiating effect on prospects for hiring throughout the state. For many practitioners, already faced with spiralling costs and a fee structure that lags behind inflation, the taking on of high-priced associates may well be less palatable than simply bending the oar a little harder or hiring legal assistants or paralegals.

**Just how serious is the plight of the job seekers? What are the statistics?**

Our law school placement services are the main source of information. They are quick to point out the problems. Students are attracted to the Northwest and prefer to try their chances at what is admittedly a tight job market than to move elsewhere. The problem is compounded by a sizeable influx of new lawyers from other parts of the country.

Figures are not as yet in on the placement of 1979 graduates. As of February, 1979, our three local law schools reported known placements of approximately 75% of their 1978 graduating classes. The percentage of placements for those who had passed the bar was considerably higher — 90-95% range. Since there were a number of "no replies" to questionnaires sent out by the law schools, the placement percentages may well be higher than indicated.

While any number of unemployed denotes a hardship, the high percentage of placements for graduates who have passed the bar would indicate the overall problem may not be as serious as supposed. The placement directors of all three law schools emphasize, however, that for many of their graduates the task of finding acceptable employment is no easy matter and involves a lot more looking around than ever before.

**Who are the real sufferers in the present situation?**

The top 5 to 10% of each graduating class can have no complaint. Firms will seek them out. It is below the level of the top student that expectations may not be met.

Minorities, in particular, are finding it rough going. Clerkships are reserved for the scholastic achievers — often from pre-designated law schools. Many black students complain that the whole recruiting process is stacked against them. Almost from the beginning day of studies, they perceive a certain futility in ever being able to break into the system. Women students also encounter a great deal of frustration because of ingrained attitudes and seemingly limited acceptance by many prospective employers.

**By way of summing up is it possible to improve or have any effect on the present situation?**

First and foremost, we lack information. No one really knows the nature and extent of problems that may exist. The bar association should seriously consider what it can contribute in this area.

Lawyer placement is at best a fragmented effort. Law schools do a good job at selling their own product. They exert limited control, however, over the hiring process and have little effect on the end result. Exchange of information on hirings and employment opportunities is spotty and hard to get at. Students must by and large fend for themselves. The bar association may be able to play a more active role in lawyer placement and generally influencing the process by which lawyers are selected for legal positions. □

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# Skills Training: A Practical Approach To Meeting the Educational Needs of Newly Admitted Attorneys

By JOHN J. MICHALIK

Legal competence, particularly in the area of practical skills, is difficult to acquire and harder still to maintain. While the typical law school curriculum prepares the graduate for admission to the Bar and provides him or her with the basic substantive knowledge, what is often lacking is adequate preparation in the skills required to handle client problems or, otherwise termed, the how-to-do-it skills necessary to an effective practice.

There have been many approaches to this problem, most notably in the trial practice area, as pioneered by the National Institute for Trial Advocacy (NITA) and other organizations including, in this state, the University of Puget Sound School of Law, the Seattle-King County Bar Association Young Lawyers Section, and other groups. After an extensive study, the CLE Committee of the Washington State Bar Association determined, some two years ago, to undertake a different approach to the problem.

Finding that in the area of trial practice there were a number of good programs available, the CLE Committee resolved to approach the problem through a series of non-trial skills programs each built upon a definite area of practice and incorporating both program segments focusing on the substantive law in that area and, more importantly, on the practical, how-to-do-it skills necessary to apply that substantive knowledge to client problems. Concurrent with that decision, as reported in the past few months in the *Bar News* CLE CLEARINGHOUSE column, the Committee determined that effective implementation of the goals of such Skills Training

Courses required a program structure involving a significant departure from the general lecture format typical of CLE courses. Specifically, the Committee was of the view that if the goals were to be accomplished the overall learning experience would require an emphasis on "active learning" and the development of course materials designed to be of immediate and practical use to the younger lawyer, including model files, suggested forms, etc. The emphasis on "active learning" was defined to include opportunities for student participation, use of varying teaching techniques and a course structure built upon hypothetical fact situations which would lead into informal discussions of techniques.

Approximately one year ago, a special sub-committee of the CLE Committee began to refine these general guidelines and, after studying similar approaches in other states, to develop the basics of the State Bar's Skills Training series. In November of 1978, the sub-committee determined that the first course in the series should focus on CREDITOR-DEBTOR PRACTICE — a decision based upon both the rapid changes in this area resulting from the adoption of the Bankruptcy Reform Act of 1978, and the fact that surveys which the sub-committee conducted indicated that consumer problems in this area were among those most frequently encountered by younger lawyers.

A faculty for this first course was recruited in December of 1978 and spent the ensuing eleven months developing the course. The final product, presented to a capacity audience in Seattle on the first weekend in November of 1979, was a two and one-half day course built around a hypothetical problem and concentrating

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*John J. Michalik is Director of Continuing Legal Education*

not only on the substantive law in the area but also on the how-to-do-it skills necessary to an effective practice in the area. In addition to approximately twelve hours of lecture time on the substantive law and practical techniques, this initial course included four hours of informal discussion group sessions, in which registrants had the opportunity to discuss the issues raised in the lectures and the hypothetical problem. An additional two and one-half hours of course time was devoted to demonstrations on such topics as taking a deposition, conducting a client interview, and arguing a motion for summary judgment. The purpose of the demonstrations, which were among the best received portions of the overall course, was twofold: in the first instance, the demonstrations were based on the course's hypothetical problem and served as catalysts for the discussion groups which followed; secondly, they provided course registrants with an opportunity to see the techniques employed by experienced counsel in such situations. In all instances, the demonstrations had practical application not only to the creditor-debtor context of the course but also to general techniques applicable regardless of substantive setting. A final segment of the course involved a one hour videotape program on cross-examination — again applicable beyond the creditor-debtor setting.

I am pleased to report that the course evaluations

submitted by registrants were uniformly enthusiastic, particularly regarding the teaching techniques involved in the demonstrations and discussion groups. This, I firmly believe, reflects not only the tremendous amount of effort and dedication put into the course by the faculty but also the basic soundness of the concept and the need for this sort of skills training.

As has been mentioned, CREDITOR-DEBTOR PRACTICE was but the first in a series of such Skills Training Courses, with the second, WILLS AND PROBATE PRACTICE, having taken place in March. Eventually, approximately a half-dozen such courses will be developed and presented on a rotating basis with each course coming up on the schedule about once every eighteen months. Presently, initial presentations of each course are being offered in Seattle only. However, as the concept and courses develop, and through the use of videotape to commit certain lecture and demonstration features of each course to a standardized form, it is the eventual aim of the CLE Committee and CLE Staff to package these courses in such a fashion that they will be capable of presentation in other parts of the state. Naturally, it will take some time to reach that final goal but it is one to which we are firmly committed as a means of both reducing course costs and bringing these important programs to young lawyers across the State. □



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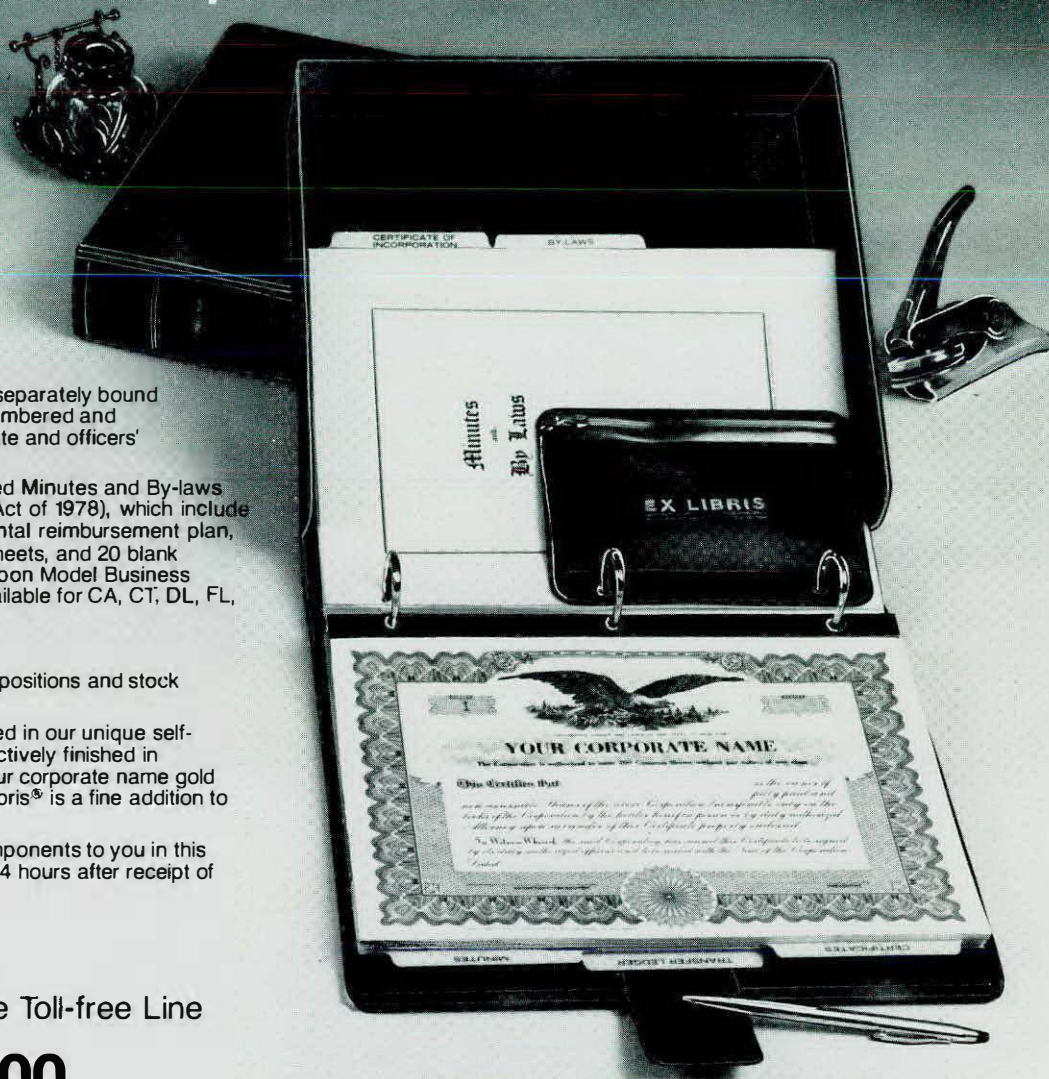
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# ABA COMMISSION PROPOSES NEW RULES OF PROFESSIONAL CONDUCT

By ARDEN J. OLSON

Although Washington's Code of Professional Responsibility was born a mere eight years ago, on January 1, 1972, it may not survive a full decade. This past January, the American Bar Association's Commission on Evaluation of Professional Standards issued its proposed Model Rules of Professional Conduct, which rewrite the A.B.A. Model Code of Professional Responsibility by changing its form completely and amending its substance in notable ways. The Commission's proposals are to be placed before the A.B.A. in mid-1981, and if past patterns continue they will shortly thereafter govern attorney conduct from Seattle to Miami.

The Model Rules of Professional Conduct are now no more than discussion proposals, but before this year ends they will become markedly less pliable. The commission, dubbed the "Kutak Commission" for its chairman Robert J. Kutak of Omaha, has invited study of the proposals by all members of the bar, establishing a deadline for comments on them of October 1, 1980, to give it time to digest the comments before the following summer.

## The Issues Summarized

The draft Model Rules of Professional Conduct entirely restructures the existing Model Code of Professional Responsibility, eliminating the tripartite Canon/Disciplinary Rule/Ethical Consideration structure in favor of a rule and comment format, similar to that found in the Uniform Commercial Code. As a result, distilling from the draft the precise nature of its reforms is a complicated task, although the Commission has assisted readers by providing a cross-reference table correlating the Model Rules with sections of the Model Code of Professional Responsibility. Specific issues regarding provisions of the proposed Model Rules include the following:

1. *The need to change format.* Attorneys have only recently become adapted to the import of distinctions between the "axiomatic" canons, "mandatory" disciplinary rules, and "aspirational" ethical considerations in the Code of Professional Responsibility. Even as the validity of decisions under the former Canons of Professional Ethics are now uncertain to an extent, present decisions will be of limited guidance under the new

Rules, and changing the format of the Code to the new rule and comment structure may heighten the uncertainty wrought by the change.

2. *Changes affecting the adversary system.* In a number of ways the proposals emphasize attorneys' social responsibilities over what may have been the more traditional emphasis on duty to their clients. These include:

a. *Client secrets.* Whereas under Canon 4 of the Code a lawyer was generally forbidden from revealing client confidences and only permitted to do so under court order, after client consent, or to prevent a crime, the Rules require disclosure to prevent acts that "would result in death or serious bodily harm to another person," require disclosure to the extent necessary to reveal that evidence presented in court by a lawyer is false, and permit disclosure to rectify wrongful client acts.

b. *Evidentiary facts.* A lawyer will be obliged to disclose facts adverse to his clients if "necessary to correct a manifest misapprehension resulting from a previous representation" made by the lawyer or if he discovers the falseness of evidence previously presented. Presently DR 7-102 requires revealing a client's fraud on a tribunal.

c. *Legal authority.* DR 7-106(B) requires a lawyer to disclose applicable legal authority "directly adverse" to his client if undisclosed by opposing counsel. The proposed Rules require disclosure of adverse authority "that would probably have a substantial effect on the determination of a material issue."

d. *Expediting litigation.* Under DR 7-102, a lawyer may not delay a trial merely to harass or injure another. Proposed Rule 3.3 requires a lawyer to expedite litigation, forbids tactics with no substantial purpose but delay, and forbids raising or controverting an issue absent "reasonable basis" for doing so.

3. *Referral fees.* Under DR 2-107, a lawyer cannot

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*Arden Olson practices in Seattle with Helsell, Fetterman, Martin, Todd & Hokanson, and serves as a trustee of the Washington State Young Lawyers. Together with Christopher L. Otorowski, of Bassett, Gemson & Morrison in Seattle, he is co-chairperson of an ABA Young Lawyers committee currently organizing attorney response nationwide to the proposals of the Kutak Commission.*

divide fees with lawyers outside his firm absent client consent, a division in proportion to work performed, and a total fee which is reasonable. Rule 1.6(e) permits fee-splitting on a basis not in proportion to work performed if "both lawyers expressly assume responsibility as if they were partners."

4. *Fee agreements.* A new requirement that fee agreements be placed in writing before rendering "substantial services" is added by Rule 1.6(b), absent an emergency or an ongoing client relationship. Contrary to DR 5-103(B), Rule 1.9 will permit a lawyer to be contingently responsible for costs or to pay them entirely on a client's behalf.

5. *Nonlawyer managers.* Contrary to DR 3-102, 3-103, and 5-107(C), Rule 7.5 will permit nonlawyers to have ownership or management authority in a law firm if otherwise consistent with the Rules, lawyer independence is assured, client confidences are protected, fees are reasonable, and no advertising or solicitation prescription is violated.

6. *Organizational clients.* Rule 1.13 explicitly spells out duties of attorneys for corporations and other organizations which are at best aspirational now. See EC 5-18. Under the proposal, a lawyer's duty to the organization as client will require "reasonable efforts" to prevent organizational harm from violations of law by its agents and employees, including notification of the organiza-

tion's highest authority. In the event that is insufficient, the lawyer is permitted but not required to "go public," even if client confidences are disclosed. The lawyer is required when "necessary to avoid embarrassment or unfairness," to remind organizational officers or directors that his loyalty is to the organization, not to them. The organization's attorney may represent directors, officers, members, or shareholders only if there would be no conflict and disclosure is made to the organization.

7. *Donative instruments.* Attorneys will be prohibited under Rule 1.9 from taking any role in drafting wills or other donative instruments if the attorney or any member of her family is a beneficiary under the instrument, whereas the Code merely advises lawyers in such situations to insist that another lawyer draw such an instrument. This among other things would prohibit a lawyer from drawing a will for his spouse when the lawyer is a beneficiary.

8. *Pro bono activity.* All lawyers will be required to render unpaid public interest legal service, whereas the Code makes this goal "aspirational." Each lawyer will be required to do this, contrary to the Code's suggestion that this obligation can be met by financially supporting legal aid programs. See EC 2-25. In addition, each lawyer will be required to report annually "concerning such service" to the "appropriate regulatory authority."

9. *Advertising and solicitation.* In general, all adver-



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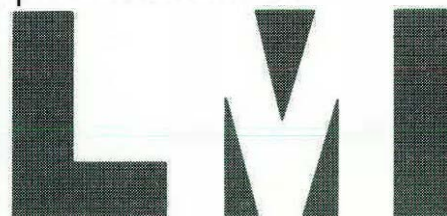
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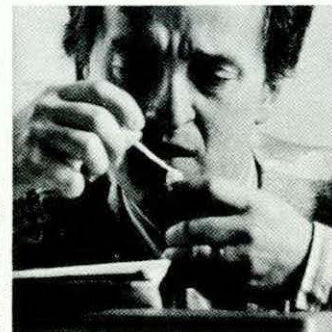
10. *Reporting professional misconduct.* Washington's version of DR 1-103 requires disclosure of another lawyer's professional misconduct only if the knowledge is unprivileged and disclosure is specifically requested by the disciplinary authorities. Rule 10.3 would require lawyers to report all information regarding "substantial" violations of the rules.

#### **Washington Attorneys' Comments Solicited**

Now is the time to have an impact on the form and substance of these proposed rules, which likely will follow us all into the next century. Recognizing this, the Washington State Bar Association is soliciting its members' thoughts on the proposals, in part by means of a survey coordinated with the A.B.A. Young Lawyers Division which many of you will be receiving this month. It is hoped that the results of the survey will be ready early this summer, in ample time to be delivered to the Commission prior to October 1. The WSBA encourages those of you who receive this survey to take time to

consider it carefully, for not only may your comments affect the final form of the A.B.A. Model Rules; they will affect this state's decision to adopt or reject these Rules once endorsed by the A.B.A.

Beyond this survey, all WSBA members are heartily encouraged to read the proposed Model Rules and to comment on them, with respect both to the issues noted above and to other issues raised by the proposals. The full text of the Commission's proposals is found in 48 U.S. Law Week, No. 32 (Supp. 2/19/80), and a copy may be obtained by writing the National Center for Professional Responsibility, 77 South Wacker Drive, Sixth Floor, Chicago, Illinois 60606. Comments on the proposals may be sent to Kurt M. Bulmer, Washington State Bar Association, 505 Madison Street, Seattle, Washington 98104, or directly to the Commission's reporter, Prof. Geoffrey Hazard, Yale University Law School, New Haven, Connecticut 06520. Although the Commission's invitation to comment assures us that its "printed word is not the last word," only through the willingness of practitioners like each of you to give this word careful thought will it be refined to the point that it reflects views of all the practicing bar. □



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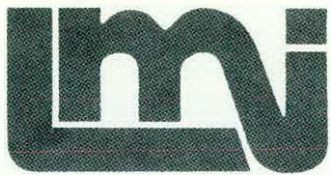
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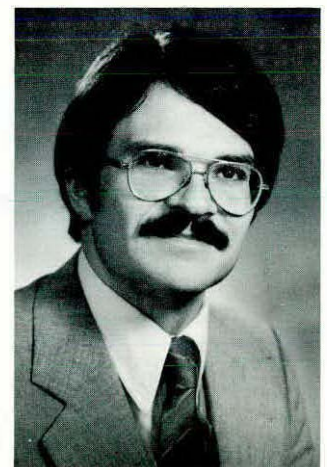
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## COURT OF APPEALS

By LARRY A. JORDAN

## Imposition of Terms and Compensatory Damages in Frivolous Appeals

It might be argued that a frivolous appeal is like pornography: difficult to define but easy to recognize. A frivolous appeal is said to be one "presenting no justiciable question and so readily recognizable as devoid of merit on face of record that there is little prospect that it can ever succeed," *Black's Law Dictionary* 796 (Rev. 4th ed. 1968), *Means v. Sears, Roebuck & Co.*, 550 S.W.2d 780 (Mo. 1977), or one that "presents no debatable question or no reasonable possibility of reversal, the word [frivolous] meaning of little weight or importance, not worth notice, slight." *United States v. Piper*, 227 F. Supp. 735, 740 (N.D. Tex. 1964). For purposes of granting a motion to withdraw in a criminal indigent appeal, an appeal is frivolous if, after an examination of the record as a whole, there are no arguable legal issues on the merits, *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493, 87 S. Ct. 1396 (1967), or there is no "potentially reversible error." *State v. Theobald*, 78 Wn.2d 184, 187, 470 P.2d 188 (1970). A frivolous appeal is to be distinguished from an appeal that is simply affirmed because it has been determined to be without merit. See *Means v. Sears, Roebuck & Co.*, *supra*; *Perez v. Gallegos*, 87 N.M. 161, 530 P.2d 1155 (1974); *Aetna Cas. & Sur. Co. v. Curlee*, 416 S.W. 2d 890 (Tex. Civ. App. 1967). In determining whether an appeal is frivolous, all doubts should be resolved in favor of the appellant, *Constructors, Ltd. v. Garcia*, 86 N.M. 117, 520 P.2d 273 (1974), and the record should be considered as a whole, *King v. Pollard*, 160 Ind. App. 209, 311 N.E.2d 454 (1974), to



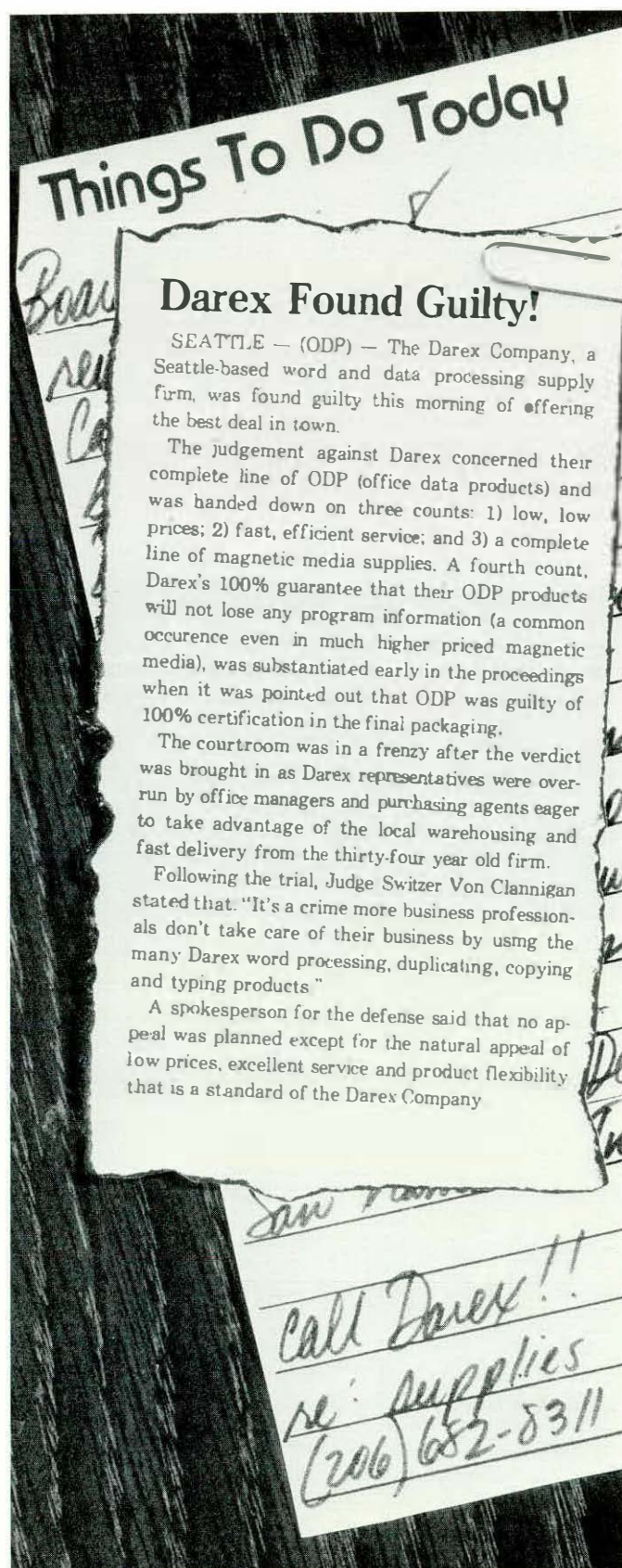
Larry A. Jordan is a Court Commissioner for the Washington State Court of Appeals, Division I.

determine if debatable issues are presented, *i.e.*, issues upon which reasonable minds might differ.

If an appeal is determined to be frivolous, the question arises as to whether terms and compensatory damages, including attorney's fees, may be awarded to respondent. RAP 18.9(a) provides that "[t]he appellate court on its own initiative or on motion of a party may order a party or counsel who uses these rules *for the purpose of delay* . . . to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply." (Italics ours.) Although there is no express authority in RAP 18.9(a) for imposing terms or damages for bringing a frivolous appeal, the clear intent of the Rules of Appellate Procedure is to award monetary sanctions and damages, including attorney's fees, instead of the harsher sanction of dismissal. RAP 18.9; *State v. Ashbaugh*, 90 Wn.2d 432, 583 P.2d 1206 (1978). See generally 3 L. Orland, Wash. Prac. § 4531 (1978); *Washington Appellate Practice Handbook* § 8.9 (1980). Since an appellate court may dismiss a case under RAP 18.9(c) (2) if it is frivolous, it should have the implied authority to impose the lesser sanction of terms or damages. This interpretation is supported by the comment to RAP 18.9 which states that "[t]he rule permits the court to fashion other remedies when appropriate," and RAP 1.2(c) which permits an appellate court to alter the provisions of any of the Rules of Appellate Procedure in order to serve the ends of justice. An appellate court may also have the inherent authority to impose damages for the bringing of a bad faith, vexatious or frivolous appeal. See *Exhibitors Poster Exch., Inc. v. National Screen Serv. Corp.*, 78 F.R.D. 192 (E.D. La. 1978). See also *State v. Ralph Williams' North West Chrysler Plymouth, Inc.*, 87 Wn.2d 298, 553 P.2d 423 (1976).

There may be several motivations for bringing a frivolous appeal. In times of inflation and rising interest rates, it is economically advantageous to bring such an appeal to delay payment of judgment. A frivolous appeal may also be brought for purposes of harassment. In either instance, terms and compensatory damages should be awarded to compensate respondent for expenses incurred in defending the appeal. See *Harold Meyer Drug v. Hurd*, 23 Wn. App. 683, 598 P.2d 404 (1979). The imposition of terms may discourage frivolous appeals and, therefore, reduce the appellate backlog and assist in the speedy resolution of meritorious cases. See *Wright v. Sprague*, 563 S.W.2d 165 (Mo. App. 1978).

Interpreting RAP 18.9 to permit an appellate court in its discretion to impose terms or compensatory damages for the bringing of a frivolous appeal is consistent with Washington law concerning the imposition of terms and damages on appeal. RAP 18.9 was taken in part from ROA 62 and CAROA 62, which were in turn based upon RCW 4.88.200 and prior statutes. In *Kiecker v. Pacific*



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*Indem. Co.*, 5 Wn. App. 871, 491 P.2d 244 (1971), the court refused to impose damages under CAROA 62 because an examination of the record failed to establish that the appeal was brought in bad faith. Similarly, in *Peterson v. David*, 69 Wn.2d 566, 419 P.2d 138 (1966), the court disagreed with respondent's contention that damages should be imposed under ROA 62 because the appeal was frivolous and taken for delay only. On the other hand, in *Fisher v. Ellsworth*, 42 Wn.2d 671, 257 P.2d 773 (1953), the court held that the appeal was taken for delay only because appellant failed to offer any legal reason why the decree of specific performance should be reversed. In *Harvey v. Unger*, 13 Wn. App. 44, 533 P.2d 403 (1975), the court imposed \$1,000 damages to discourage the taking of appeals for delay only. In *Harvey*, the only issue raised concerned the granting of plaintiff's motion for summary judgment on the issue of liability. The court concluded that the undisputed facts permitted no other conclusion than that appellant was liable and that he failed to point to any facts that would support a finding of respondent's contributory negligence. Although not articulated, it is apparent that the court in *Harvey* reviewed the record as a whole and determined that the appeal was brought for the purpose of delay because it was frivolous. In *Trohimovich v. Department of Labor & Indus.*, 21 Wn. App. 243, 584 P.2d 467 (1978), the court, after carefully reviewing the record, was convinced that Trohimovich appealed from the superior court judgment solely to delay payment of legitimately incurred industrial insurance premiums and, accordingly, awarded \$1,000 compensatory damages plus costs on appeal. The court stated at 249: "We constantly welcome aggrieved litigants who legitimately seek redress in this court, but we trust the imposition of this sanction will, in the future, tend to deter the filing of appeals for delay only." Again, the court did not expressly hold that the appeal was frivolous, but it is apparent that it determined the appeal presented no justiciable or debatable issues and was frivolous and, therefore, brought for the purpose of delay. More recently, in *Harold Meyer Drug v. Hurd*, *supra*, Hurd appealed an award of \$10 in attorney's fees granted to her when she obtained dismissal of the drugstore's suit against her. The court found that the drugstore's lawsuit was frivolous and awarded Hurd, as prevailing party on appeal, reasonable attorney's fees incurred in the superior court and in the Court of Appeals.

The Washington cases that have imposed terms and damages under ROA 62, CAROA 62 and RAP 18.9 have not discussed the question of whether the appeal was frivolous. However, it is apparent that the court, after examining the record as a whole, determined that the appeal was frivolous and must have been brought for the purpose of delay. See 5 Am. Jur. 2d *Appeal & Error* §

1024 (1962); *Acevedo v. Immigration and Naturalization Serv.*, 538 F.2d 918 (2d Cir. 1976). See also *Harold Meyer Drug v. Hurd*, *supra*.

It may be difficult to generalize as to classes of cases which courts may find frivolous; however, in factual appeals or those raising issues involving the discretion of a trial court, an award of terms or damages may be appropriate. Under *Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 343 P.2d 183 (1959) and its progeny, the appellate courts of this state have consistently held that they are constitutionally prohibited from retrying factual disputes on appeal and that the findings of fact must be considered verities if supported by substantial evidence. See e.g., *Lewis v. ITT Continental Baking Co.*, 93 Wn.2d 1, 603 P.2d 1262 (1979). Counsel should advise his or her client that there is little likelihood of success in a factual appeal and also that if an appellate court determines there is no debatable issue as to whether the findings of fact are supported by substantial evidence, terms, compensatory damages and costs may be awarded.

It is also arguable that terms and damages should be imposed in domestic relations appeals involving custody, support, maintenance and property distribution, matters which have repeatedly been held to rest within the sound discretion of the trial court. See e.g., *In re Marriage of*

*Young*, 18 Wn. App. 462, 569 P.2d 70 (1977); *In re Marriage of Nicholson*, 17 Wn. App. 110, 561 P.2d 1116 (1977). If, in considering the record as a whole, there are no debatable issues as to whether the trial court abused its discretion, the appeal should be considered frivolous.

Attorneys and litigants should be aware that appellate courts have the authority to impose terms and damages for the bringing of a frivolous appeal. Although there is a right to appeal, terms and compensatory damages may be imposed to discourage frivolous appeals and to compensate injured respondents. Under RAP 18.9(a), terms and damages will usually be awarded against the appellant; however, in appropriate cases, they may be imposed instead against counsel. *Acevedo v. Immigration and Naturalization Serv.*, *supra*. □

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The course is designed as an intermediate level presentation, with advanced segments of the program for more experienced practitioners. An introduction to foreign taxation will be presented for attorneys involved with foreign companies or with U.S. companies doing business abroad.

Faculty members include Lawrence J. Lee, Phoenix, chairman; Prof. John C. Huston, Prof. Laverne Dotson, and Robert D. Kaplan, Seattle; Joseph Wetzel, Portland; and Richard Griffith and Roger Fonseca, Honolulu. A wide range of tax topics will be covered, including: Organization of the Corporation; Subchapter S Election;

Corporate Fringes - How to Get Money Out of the Corporation; Executive Compensation; Risks of Operating as a Corporation; Distributions; Recapitalization; How to Realize on the Business; Foreign Taxation; How to Turn Your Deal Into Cash; Professional Corporations and Executive Corporations; and Acquiring Net Operating Losses.

Seattle's newest first class hotel, The Park Hilton, will be the program site. A block of rooms has been reserved for out of town registrants. Luncheon will be included on Wednesday, July 9, and a special reception is scheduled for Thursday evening, July 10. The Conference adjourns on Friday, July 11 at 12:00 noon.

The announcing brochure and registration information will be mailed in the next few days. Prompt response to this brochure is encouraged as registration is expected to be substantial. For more information, contact the CLE Office, Washington State Bar, (206) 622-6054. □

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## Briefly Noted

### Evidence Treatise To Be Revised; Comments Invited

The adoption of the new Evidence Rules necessitates a complete revision of Prof. Meisenholder's treatise, Evidence Law and Practice. Portions of the original book which remain applicable will be updated and included in the second edition. Portions of the book superseded by the new rules will be rewritten. Prof. Meisenholder has chosen not to undertake the task of rewriting the book, and the new material will be written by Karl Tegland.

Tegland would appreciate any suggestions or comments regarding the new book. The identification of problems in the application of the Evidence Rules would be particularly helpful. General suggestions about the scope and format of the new book are also solicited. Correspondence

should be sent to Karl Tegland, University of Washington School of Law, Seattle, Washington 98105.

Publication of the second edition is expected by the end of 1981.

### Sexual Harassment Back-Up Center Opens

A National Sexual Harassment Legal Back-Up Center has been opened by Working Women's Institute. Located at the Institute's Offices in New York City, the Center will provide assistance to attorneys throughout the United States who are handling claims of sexual harassment in the workplace. Sexual harassment is defined as any unwanted attention of a sexual nature from someone at the workplace that creates discomfort and interferes with the job. Whether it results in a direct economic sanc-

tion, voluntary termination or continued work in an oppressive and hostile atmosphere, it is a manifestation of sex discrimination in employment.

Among the services to be provided the Bar are:

1. Assistance and consultation in the preparation and development of sexual harassment cases, including the development of model complaints and various legal memoranda on procedural and substantive problems encountered in litigation of this nature.

2. Preparation of *amicus curiae* briefs in selected litigation which will have significant impact in the area of sexual harassment.

3. Expert witness testimony.

4. Brief Bank. The Institute has a brief bank covering the area of sexual harassment, including pleadings, briefs and decisions. These are available on request for a nominal fee. Subscribers to the brief bank will receive an up-date every four months on the state of the law and a listing of available materials. A year's subscription costs \$20.00.

The Institute and Back-Up Center are at 593 Park Avenue, New York, New York 10021.

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### Spokane Young Lawyers' Trial Practice Seminar

The Spokane County Young Lawyers Section, in conjunction with the Spokane County Bar Association, is again sponsoring a two-day intensive trial practice seminar. The seminar will run May 31st and June 1st at the Spokane County Courthouse. The seminar will be much the same as the successful seminars held in the preceding years, including lectures, workshops and active participation by the attendees. There will be initial client interviews and all discovery steps up through and including participation in a mock trial. This seminar has been approved for 14 CLE credits for both Washington and

Idaho attorneys. Cost \$50.00. New admittees and other young attorneys are encouraged to attend and law firms with associates in those categories are particularly urged to have their personnel take advantage of this training. To register contact Mr. Robert Milhelm, West 1300 Dean, Spokane, Washington, (509) 328-4226.

### Civil Pattern Jury Instructions Being Revised

Stanley C. Soderland, Chairman of the Washington Supreme Court Committee on Jury Instructions, reports that the Committee has just sent to the printer the completed manuscript for a second edition of Washington Pattern Jury Instructions-Civil. The original volume of civil jury instructions was published in

1967 and a pocket supplement in 1972. There have been so many changes in the law since that time that a revised edition has been badly needed. The committee has been working on this revision since it finished the criminal pattern instruction book in 1977.

### Discipline

#### Notice of Suspension

Former Seattle attorney Donald McLeod was suspended from the practice of law for a period of one year by the Washington State Supreme Court on January 29, 1980, pursuant to stipulation.

### In Memoriam

Judge **Norman B. Ackley**, 59, of Seattle, died February 24. He was admitted to the Bar in 1949.

**James Holland Bell**, 73, of Seattle, died January 27. He was admitted to the Bar in 1931.

**John H. Binns**, 84, of Tacoma, died February 22. He was admitted to the Bar in 1922.

Judge **Ian R. MacIver**, 74, of Selah, died February 4. He was admitted to the Bar in 1931.

**Byron D. Scott**, 79, of Tacoma, died March 13. He was admitted to the Bar in 1923.

Judge **George R. Stuntz**, 77, of Seattle, died March 4. He was admitted to the Bar in 1928.

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For further information: **Francia Luessen**, Director of  
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Mr. Durkan served seventeen years with the IRS as corporate auditor, review and trial attorney and as Assistant Appellate Counsel of the Seattle District. Member of Washington and Montana Bars.

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## CLASSIFIED

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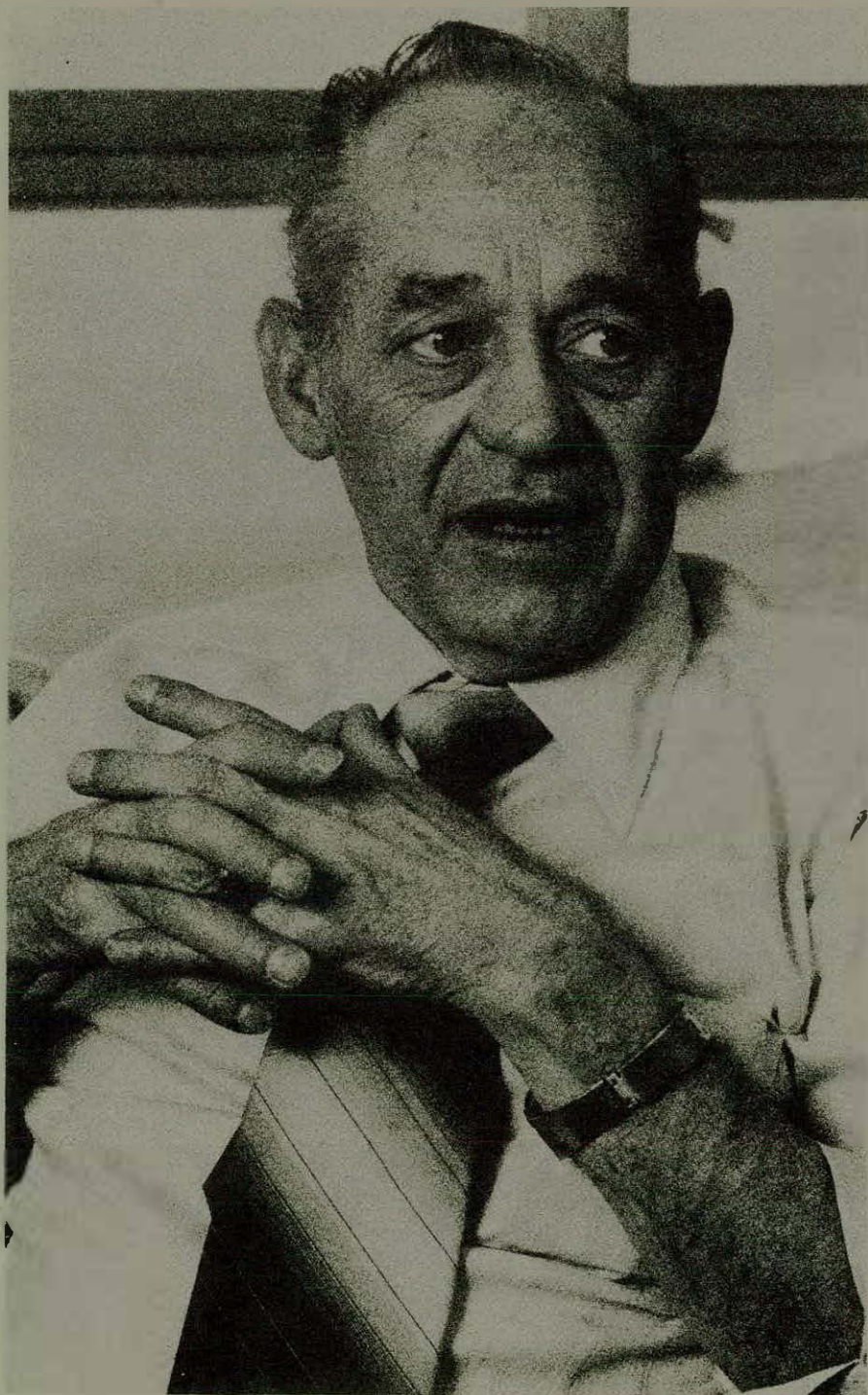
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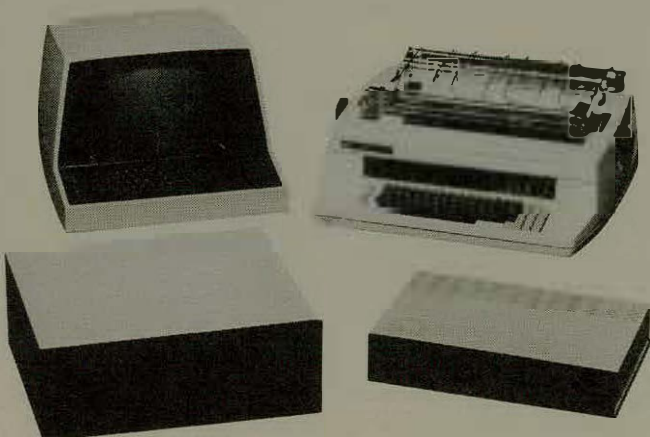
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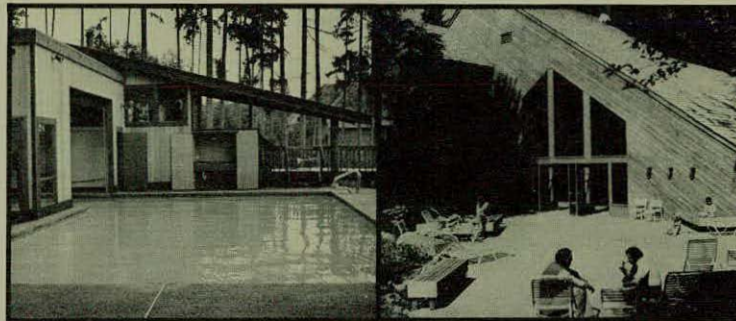
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