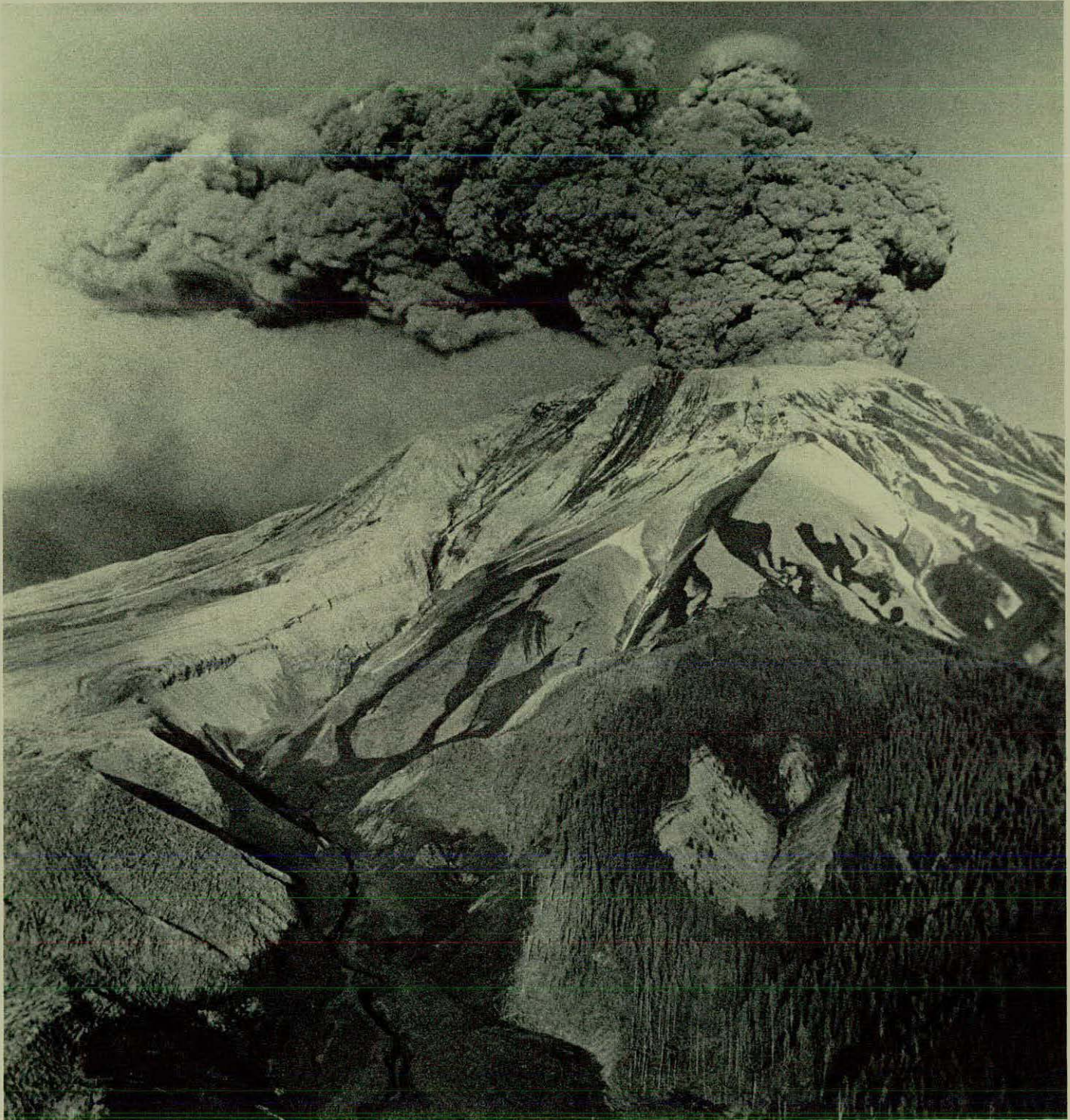
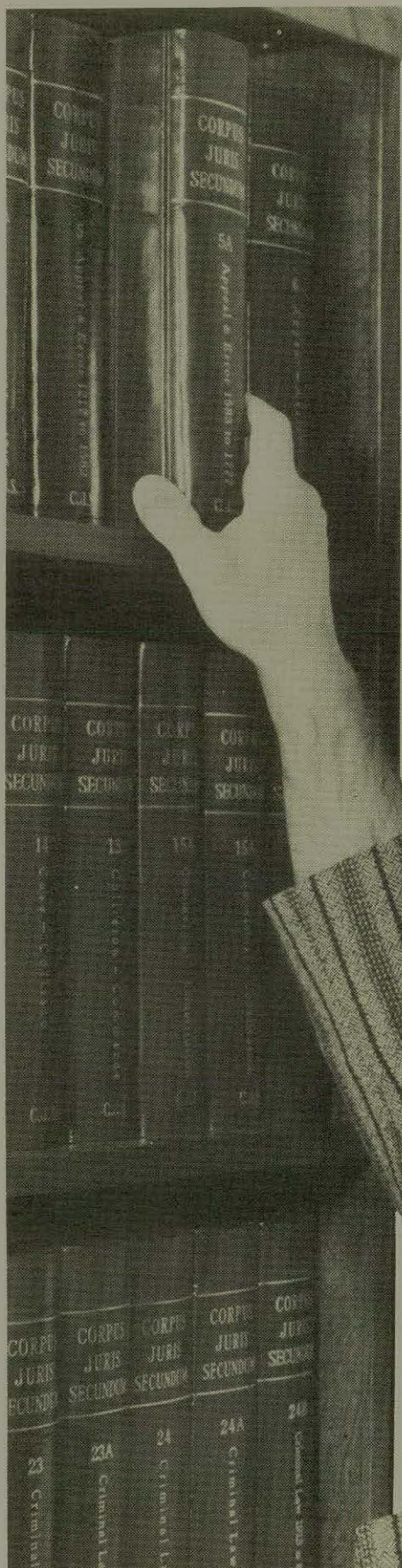

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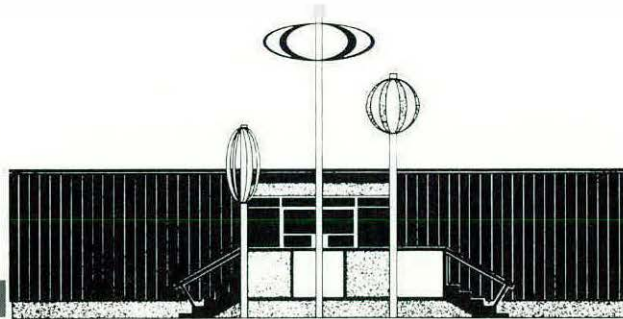
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WASHINGTON STATE BAR NEWS

FEATURES

16 Strategy for Reform in the Determination of Prison Terms

23 Assuring Educational Rights: WAC 392-171 Hearings

32 Issues Pending in Supreme Court, May Term

IN THE NEWS

28 Washington State Bar Association Audit for Fiscal 1978-79

38 Credit Union Is "Fastest Growing" in State History

39 Filing Procedure for Resolutions To Be Presented at Annual Meeting

40 Reforms End "De Novo Appeal" from District Court

42 New Legislation of Interest

46 Disciplinary Board Policy of Cooperation

48 King County Superior Court Motions Procedure

49 King County Superior Court Document Filing Procedure

DEPARTMENTS

5 Letters

8 If You Ask Me

11 Editor's Page

15 President's Corner

38 Board's Work

39 Committee Reports

40 Courts

44 CLE Clearinghouse

45 CLE Approved Courses

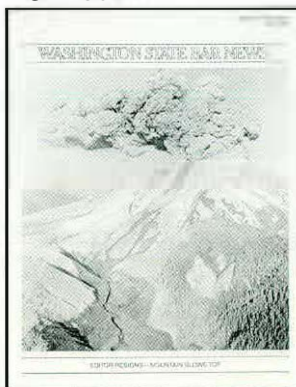
47 Around the State

48 Briefly Noted

49 In Memoriam

50 Notices

Our Cover



Mount St. Helens erupted on May 18, 1980, shortly after Jay V. White submitted his resignation as editor of the *Bar News*. Applications for the editorship will be accepted until July 21, 1980. See Editor's Page for details.

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Judge Advocates Criminal Appeals Panel

Editor:

Two years ago I expressed my concern about the inordinate time involved in processing cases in the appellate system of our state. At that time I pointed out to the Judicial Council, the Bar Association, and other interested organizations, that these two and three year, or more, delays are harming our system. Criminal cases flood the appellate courts and civil cases wait on the sidelines. Some criminal defendants raise new families in the meantime and civil litigants go broke.

Because of these delays, I cannot agree with our Chief Justice that the state of the judiciary in the State of Washington is in good shape. Until we streamline appellate review of criminal cases, the situation will worsen. I still maintain that a separate panel exclusively handling criminal appeals would make the judges thereon well equipped to handle 90 percent of such appeals by summary oral decision. This would be a monumental breakthrough to appellate court congestion.

As I stated in my letter of March 27, 1978, to the Judicial Council and others, there may be other and better ways to solve the appellate delay problem, and this letter is published to determine whether attorneys feel that this problem is real and what suggestions they may have to solve it.

J. S. KURTZ
Judge, Whatcom County
Superior Court

Bellingham

Pardon Our French

Editor:

May I offer another translation for the caption to Daumier's cartoon on

the cover of your April issue?

I believe the accurate, and funnier, translation is "Gentlemen, we still have a 43rd toast to raise . . . to the Temperance Society".

After this little brickbat I would hand you a bouquet for publishing the Carrithers article on the Alcoholic Client to go with the cartoon. I think this subject is a very important but

neglected issue and that you have done Washington lawyers a favor by bringing it up. As a non-lawyer who deals a lot with lawyers, I hear a typical preoccupation with just winning the case for the client, even in obviously alcohol-related cases like DWI. Granted that the lawyer's main job is to get the best result in his client's favor, the long-term effect of ignor-

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Editor:

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If You Ask Me...

Time and Punishment: A Proposal for Depopulating the Jails

By Steven A. Reisler

Caught in the middle of resurgent conservatism, spiraling inflation, and a grass-roots tax rebellion, this state's prisons and jails have become full to the bursting point. The fear that overcrowded conditions could lead to bloody prison riots *à la* Santa Fe and Attica has caused the public sector to apply pressure on judges to stop putting so many people behind bars.

Of course, the public still expects judges to lock up heinous criminals who threaten society. Moreover, the tax-oppressed voter would not be

pleased with the judge who sentenced a criminal to an apparently expensive, comfortable, psycho-experimental prison alternative without bars and armed guards. Thus, with Washington's institutions full beyond capacity and the cost conscious public clamoring for protection, it is obvious that what the state's judges need are some good, cheap alternatives to sentencing alternatives.

Fortunately, the law has a solution for every problem. Squirreled away in the dusty pages of the RCWs are some obscure statutes which satisfy the sentencing needs of our ambivalent society.

One way to keep down the population of local jails is to "compromise" misdemeanors, as contemplated by RCW 10.22.020. This section provides that for those misdemeanors which are not committed upon an on-duty police officer or committed with felonious intent, the judge may dismiss the charge if the victim "has received satisfaction for the injury" caused by the defendant. The utility of this statute is threefold. First, it keeps the petty misdemeanor out of the jail jungle where he would be exposed to more serious criminal behavior. Second, its primary effect is to compensate the victim for his injury. Third, compromising a misdemeanor refocuses the law's attention upon the victim and makes him, not the state, the major player in determining the offender's fate.

Compromising misdemeanors alone would not significantly reduce jail populations, primarily because most misdemeanants do not serve jail

Steven A. Reisler is law clerk to King County Superior Court Judge George Revelle.



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time anyway. Furthermore, some people would cast a jaundiced eye on any sentencing procedure which did not *punish* the criminal. But for them, too, the law has a sentencing alternative: RCW 9.92.140.

RCW 9.92.140 is a neglected law enacted in the 19th Century which provides that a prisoner in the county jail can be compelled to work on public projects eight hours a day, every day of his jail term. Not only would this clean out the jails during daylight hours, but tapping this free labor pool would enable the city to clean up its streets.

Further reduction of the number of prisoners in the jails could be accomplished by invoking RCW 9.92.130. A close relative of RCW 9.92.140, this statute, too, would help empty the county jails by compelling city prisoners to do eight hours a day upon the public streets. The distinctive aspect of this law is that the judge can also compel these city prisoners to wear a ball and chain while engaged in their civic chores. Thus this law would not only help to reduce the jail population, but the spectacle of prisoners wearing the ball and chain sweeping the streets of Washington's cities would inspire citizens to stay on the straight and narrow path. Use of the ball and chain would reduce the need for prison guards during daylight hours. Thus, the police could put more personnel on the street to arrest more criminals which, in turn, would replenish the labor pool.

The judges have another statutory weapon to use in their fight against overcrowded prisons: RCW 9.92.100. Under this law the judge can order the sterilization of rapists, child molesters, and habitual criminals in addition to whatever other punishment is imposed. True, this would have no effect on present prison populations, but the law obviously contemplates reducing *future* prison levels by nipping genetically transmitted criminality in the bud

(pardon the expression). Foresight and a liberal application of RCW 9.92.100 could reduce the number of "born criminals" in this state, thus alleviating overcrowded prison conditions in the years ahead.

In short, judges can help reduce prison populations without sacrificing public security. Their statutory arsenal includes the power to com-

promise misdemeanors, put prisoners to work in the streets, and sterilize the progenitors of future generations of criminals.

Obviously, such sublime measures would be more sensible and cost effective than, say, building new, more humane detention facilities, or striking at the root causes of criminal behavior. □

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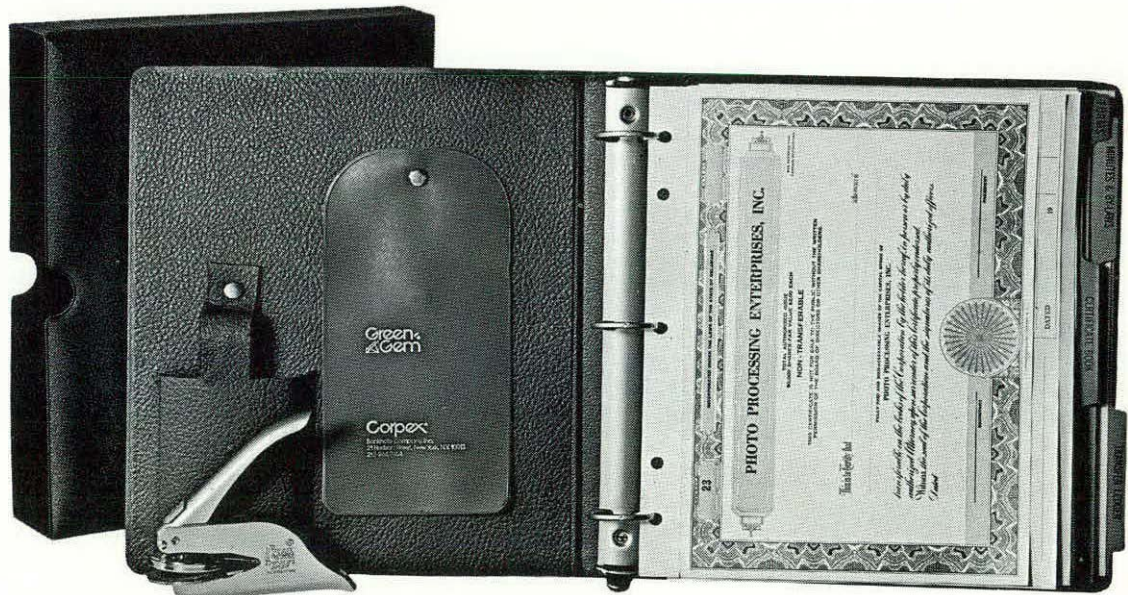
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Who Wants To Edit The Bar News?

I have decided to resign from the editorship of the *Bar News*, effective December 31, 1980.

I know that this announcement will be a great disappointment to the two people who read this column regularly. Out of consideration for their feelings, I request the rest of you to refrain from public celebration of this seventh opportunity in the nearly 34-year history of the *Bar News* for us to get a decent editor. After all, when your score is 0 and 6, any celebration for getting to a seventh game is rather academic. Still, hope springs eternal so, until we know who he or she is, I will refer to the next editor as "Lucky 7".

I handed my resignation to the Editorial Advisory Board during its meeting in Seattle on May 3. Chairman David L. Broom immediately appointed Wilbert Anderson and William Rives, who are members of that Board, to form a search committee which will review applications for the editorship.

Applications should be sent to David Broom, 1215 Washington Mutual Building, West 601 Main Avenue, Spokane, Washington, 99201, postmarked no later than July 21, 1980. The sole requirement is active membership in the Washington State Bar Association, but evidence reflected in resumes or writing samples of a smattering mastery of the English language will be welcomed.

One of the hallmarks of our bar association is that its magazine is edited by an independent lawyer selected from the association's general membership by the lawyers who serve on the Editorial Advisory Board. The Board of Governors reserves the authority to ratify or veto

the editorial board's choice until it gets it right, or to abolish the editorial board or the *Bar News*, or anything else.

The tradition of having the *Bar News* edited by a lawyer on a part-time basis, rather than by a professional journalist or full-time bar association staff member, is maintained with some cost in terms of efficiency and is manifested in the somewhat erratic quality of the publication. The *Bar News* has been both the better and the worse for it, but this also distinguishes the magazine from the bulk of bar association publications throughout the country because the lawyer editor is a real link to the membership the *Bar News* serves.

The American Bar Association's Alan E. Kurland, who edits what I regard as the best bar publication in the country, *The Bar Leader*, recently described the *Bar News* as being among the top state bar magazines in the country. True, that tells you something about how bad most bar publications are, but I mention this, not only because Kurland told it the way I told him to tell it, but also because he told it like it is: Lucky 7 can take pride in being editor of this magazine.

"Take this job and shove it. I ain't working here no more." It has been reported that country music singer Johnnie Paycheck may have sung these words one time too many. A couple of months ago, the Huntington, West Virginia, City Council banned Paycheck from that city's civic center because of complaints that he smoked and drank beer during a performance at which the audience was not allowed to do either. I smoked and drank beer during many



Photo by Arthur A. Butler of Seattle; Background by Sano

performances as *Bar News* editor, but I have not been banned from anywhere, presumably because my audience is allowed to do both.

Speaking of Paycheck, one thing that Lucky 7 should not expect is a paycheck. Historically, the *Bar News* editor was not paid anything. Shortly before my appointment, someone decided that the editor should be paid \$200 per month in addition to reimbursable expenses. That's two cents per lawyer per month paid out of bar dues. That's why I have considered calling this column, "Putting Your Two Cents In". That's also inflation for you: today you have to pay \$200 monthly to get an editor to work for nothing.

I mention the \$200 not by way of complaint, but because I want anyone who is considering applying for the editorship to have some idea of what is involved. There is a substantial time commitment, limited only by personal energy. When people ask me how much time I spend on the *Bar News* each month, I reply, "As much as I can." That probably amounts to 50 or 60 hours per month, about half of which is on my firm's office time. There is at least one day out of the office each month devoted to attendance at the Board of Governor's monthly meetings which take up a Friday and a Saturday morning, albeit usually in pleasant surroundings accompanied by fine hospitality. An



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organized editor could delegate some responsibility to others, but I have not been organized as anyone who ever has submitted anything to me for publication never to hear a word knows well.

The editor does enjoy substantial support from the bar association staff, notably Wayne Wilson and Katie Corrigan, who do all the layout, proofreading and a lot of other things, and Dennis Eagan, who handles advertising. Further, members of the Editorial Advisory Board have become a valuable resource to the editor in developing "theme issues", such as last month's on legal education and those describing the work of the bar office (April, 1979) and long-range planning for the legal profession (August, 1979).

You may have noticed by now that I have said little to indicate why anyone would want this job, but that is not because there is no significant reward in being editor. It is because the reward is personal, varies with each individual, and is difficult to articulate. For me, "reward" is the wrong word; rather, what is gained is a sense of satisfaction in making the effort; an enjoyment of the writer's solitude; and the feeling of participation which comes from being witness, ostensibly on behalf of 10,000 lawyers, to the activities of leaders in the bar, the judiciary, and state government, both at work and at play. Above all, it is the friendships.

I am happy to say that there are no negative reasons for my decision to resign. Rather, the reasons are positive ones, such as giving the other members of my firm, Houghton Cluck Coughlin & Riley, some relief from the substantial monthly subsidy of the *Bar News* which my editorship has entailed, together with my sense that I have contributed about all I can to the development of the magazine. John Rupp, who started the *Bar News*, once told me he quit the editorship after ten years because "sooner or later, you run out of soap." In his

case, it was later, and he is still capable of lathering up once in awhile. In my case, it boils down to a feeling that you should quit when you think you're ahead, or before the welcome is worn out, or at least while the getting is good.

The new editor, who will be selected in time to produce the January, 1981, issue should understand that I will remain editor through the Annual Meeting in Hawaii. There is precedent for this in my life: at the age of 14, I quit my paper route a month after receiving my Christmas tips.

With the publication of the December magazine this year, I will complete four years and one month as editor, and also "complete the circle" in having seen the departure of every member of the Board of Governors who confirmed my appointment to that post. I could do no less for the new Board.

Serving as editor of the *Bar News*

has been one of the most positive experiences of my life, and I am sure that I will miss it.

JVW

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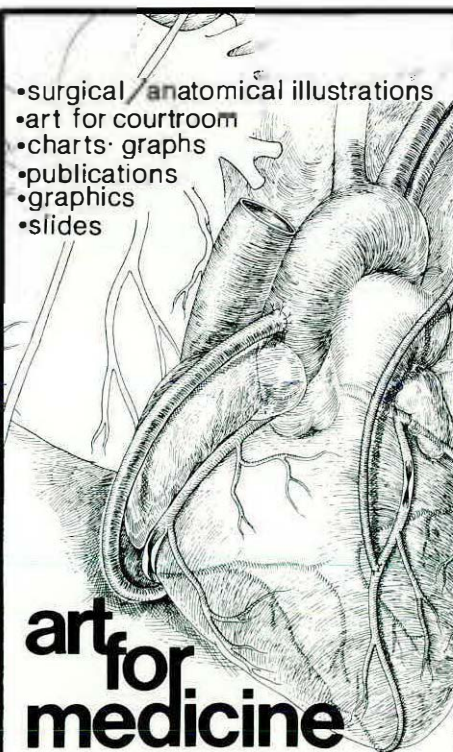


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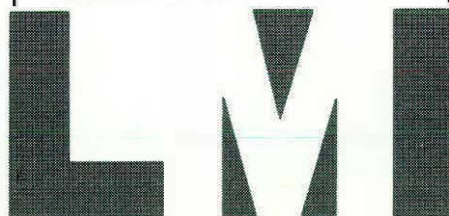
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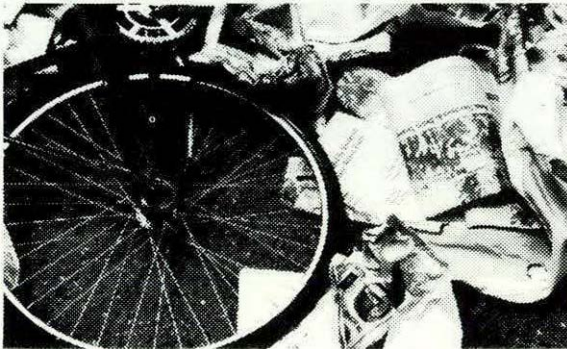
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The Mark

Did you ever have the feeling while preparing for a jury trial, a contract, a brief, or an appeal that your mind was sandbagged? That you were mentally on the ropes? Too pressured by time? Fresh out of creativity? Worried by the promptness, organization and vitality of the competition?

We have all had those feelings at one time or another. They may have been caused by exhaustion, a heavy workload, boredom, or any number of other factors. Whatever the causes, the result can be absolute frustration, no matter what caliber of mind you have or the measure of success you have enjoyed. Ultimately the result is a poor performance.

To prevent this state of mind, it can be profitable to occasionally conduct a self-administered mental check-up. You might be amazed at some of the self-induced causes of trauma you uncover. For example, are you letting yourself in for trouble via your work habits? Are you a last-minute person who justifies lateness on the basis that you "do your best work under pressure?" Do you depend on your mental agility and creativity to pull you through tough situations when a more thorough gathering and analysis of facts might have done the same thing? Does an irrational fear of failure upset the level-headed application of logic? Has the stimulation of innovation been lost in a dependence on the accepted ways of doing things? Are you trying to do too much?

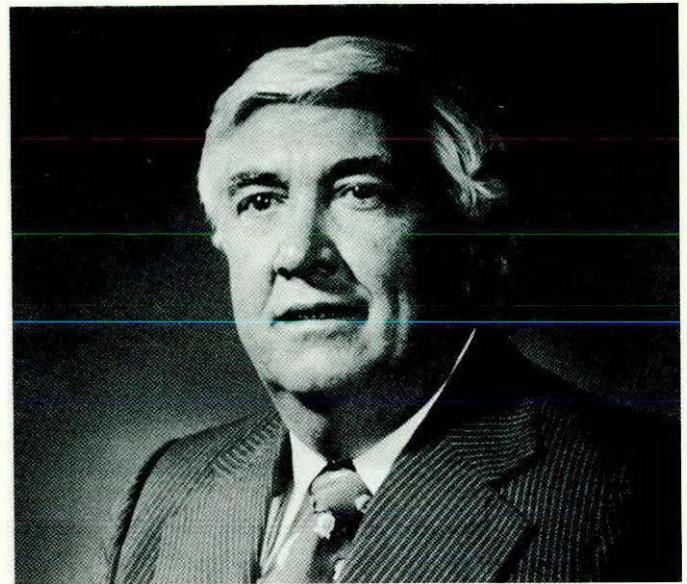
The list of questions could go on. The point is that we are often the cause of our own problems, and we can, with a little thoughtful consideration, single out those problems and attack them systematically.

Our attention is sometimes so preoccupied with a mixture of problems that we forget a basic tenet, however, one essential to the successful practice of law. It is that any degree of success we may have will vary directly with our success in *competing with ourselves*.

When we read about the great men and women of history, a common thread we see is a total dedication to excellence. No matter what the background, the circumstances, the difficulty or the opposition, a single-minded, uncompromising pursuit of high goals was constant.

It is a fair question to ask how many times you have read your Oath of Attorney since you swore to uphold it. It contains some rather lofty language. Inspiring language. But it is also down to earth, attainable and easy to live with.

The truth is that the more we concentrate on upholding the commitments made with that oath, the more rewarding law practice becomes, to the point that problems such



as worry and pressure begin to fade. Blue sky thinking? Not really.

The pursuit of excellence in the practice of law is more an opportunity than a requirement. If we regard it as an opportunity, we tend to concentrate more on how we can achieve it, rather than how we can avoid not achieving it. Each of us has been endowed with a certain amount of intelligence, energy, and wisdom. Stretching those assets to their fullest use can make life an extraordinarily satisfying experience.

The place to begin is through vigorous and unyielding competition with ourselves. It fortifies us to bypass the stumbling blocks that form in our minds. It spurs us to aim for the really important goals. It helps us to prepare better to overcome the obstacles. As is life, the practice of law is a voyage. Just as each day adds to our foundation of experience, and to our resources for dealing with the future, so does self-competition continue to build confidence and competence. The effort required is continuous, but the results can be spectacular. For the benefit of your clients and yourself, I invite you to check your own level of self competition. It might make a difference in the ability to achieve consistent excellence, rather than to just cope.

Strategy for Reform in the Determination of Prison Terms

By DIANE OBERQUELL

"The sound use of discretion and ultimate accountability for its exercise rests largely in making visible the criteria used in forming judgments. Parole Boards must free themselves from total concern with case-by-case decision making and attend to the articulation of the actual policies that govern the decision making process."

*National Advisory Committee on
Criminal Justice Standards and Goals,
1973*

Limiting Discretion in Favor of Structured Decision-Making

The role of discretion in setting prison terms has been widely debated in recent years. Many believe that individual consideration of cases is important if prison terms are to reflect the unique circumstances of each conviction; however, the degree of discretion which authorities should be allowed to exercise is questioned. When discretionary decision-making is permitted, how should the sentencing process be structured to eliminate arbitrary decisions and prison term disparities?

In Washington State, the Board of Prison Terms and Paroles sets the minimum term of confinement for each person sentenced to prison, grants or revokes paroles, and grants final discharges.

Historically, the Board has exercised a great degree of discretion in making prison term decisions and has considered the unique circumstances of each crime.

Nevertheless, in the mid-1970's, the Board began to question its implicit decision-making process in which policies were not defined. The lack of established criteria for setting prison terms and paroles made it difficult to control disparities between decisions and also difficult to notify offenders and the public of the basis for the Board's decisions. Therefore, in 1976, the Board decided to establish guidelines which would permit individual con-

sideration of cases, but which also would limit the use of discretion in favor of stated criteria formulated through the consensus of Board members.

The establishment of the decision-making guidelines was facilitated through the Parole Decisions Project, a three-year research study funded by the Law Enforcement Assistance Administration of the U.S. Department of Justice. For the Washington Board, the guidelines provide a means for combining the humane value of individualized term setting with the administrative merits of structured decision-making.

During the development of the guidelines, the Board deliberated such questions as:

- Should fairness be a primary factor in designing a sentencing policy?
- Should punishment fit the crime or the individual?
- Does individualized decision-making in setting terms lead to disparities?
- How can the Board know when a person is rehabilitated?
- Does the Board have any responsibility for the overcrowding of Washington's prisons?
- How can the practices of the Board be communicated to the public?
- How can public safety best be enhanced by the Board?

Discussion of these and similar questions brought the Board to the determination that:

- There is broad discretion throughout the criminal

Diane Oberquell chairs the State Board of Prison Terms and Paroles.

justice system.

- Discretion needs to be structured to avoid arbitrary decision-making.
- Use of explicit guidelines for sentencing and setting prison terms provides the basis for the most equitable and effective sentencing system.

There are two sets of guidelines developed through the Parole Decisions Project. The minimum term guidelines provide procedures for setting minimum terms based upon a determination of the severity of the act and an evaluation of the individual's criminal record. The reconsideration guidelines provide procedures for considering and granting reductions of the minimum term. The term reductions, which may be granted after a period of incarceration at a Parole Review meeting, are based on an assessment of the risk of the individual's re-offending after release.

The guidelines provide the Board with the means to:

- Base individual judgments upon established criteria
- Reduce term-setting disparities
- Make public the criteria for decision-making
- Permit analysis of decisions

Minimum Term Guidelines

The minimum term guidelines cover seven felony classifications:

- Murder
- Manslaughter
- Sexual Molestation
- Robbery
- Assault
- Property Offenses
- Drug Offenses

Each classification carries a set length of prison time (base time) expressed in months which is considered the minimum time to be served for that classification. In addition, the guidelines list those aggravating circumstances which the Board considers important in setting terms. Each carries a set length of prison time. The total time for all aggravating circumstances which were present in the offense is added to the base time of the felony classifications.

Furthermore, the guidelines provide consideration of the individuals' prior criminal record. Each prior felony conviction carries a set length of prison time. These months of time are added to the base time and the aggravating circumstance times.

Minimum Term Guideline Process

- The Board is provided with information regarding the aggravating circumstances from the probation officer and prosecutor reports.

- The prior record is summarized by Washington Reception Center staff.
- The offender has opportunity to review the information.
- The guideline minimum terms are computed and a summary form prepared by the Board staff.
- The Board members meet the inmate in panels of two, discuss the offense, review the guideline information, and set the minimum term.
- The Board members may go outside the guidelines when special circumstances exist. Reasons are given for these decisions.

Notification Form

A form is prepared for inmates before they are seen by the Board panel. The guidelines promote consistent decision-making, so that similar persons who have committed similar offenses are treated similarly. The inmates are notified of the Board's decisions after the hearings.

Public Safety Score

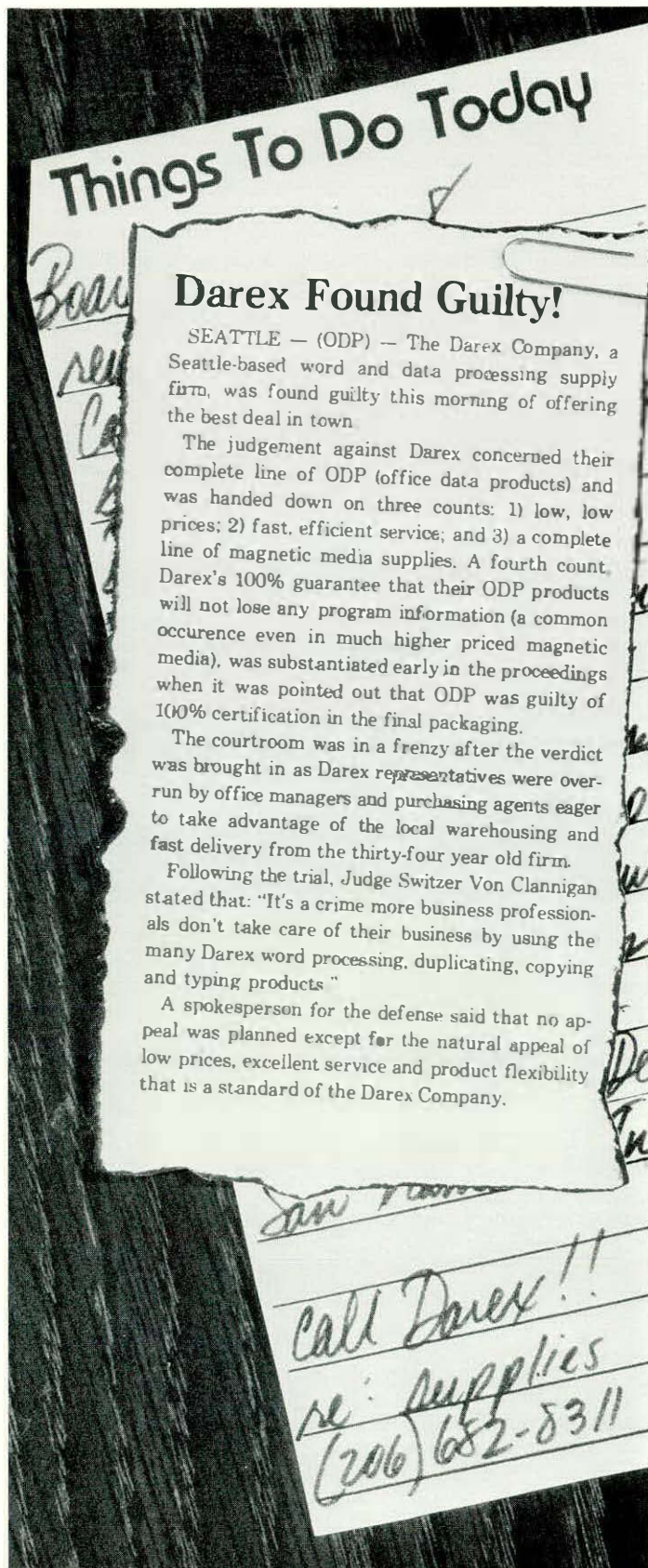
The primary concern of the Board is public safety. The Board is, however, cognizant of the high cost to the

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Things To Do Today

Darex Found Guilty!

SEATTLE — (ODP) — The Darex Company, a Seattle-based word and data processing supply firm, was found guilty this morning of offering the best deal in town.

The judgement against Darex concerned their complete line of ODP (office data products) and was handed down on three counts: 1) low, low prices; 2) fast, efficient service; and 3) a complete line of magnetic media supplies. A fourth count, Darex's 100% guarantee that their ODP products will not lose any program information (a common occurrence even in much higher priced magnetic media), was substantiated early in the proceedings when it was pointed out that ODP was guilty of 100% certification in the final packaging.

The courtroom was in a frenzy after the verdict was brought in as Darex representatives were over-run by office managers and purchasing agents eager to take advantage of the local warehousing and fast delivery from the thirty-four year old firm.

Following the trial, Judge Switzer Von Clannigan stated that: "It's a crime more business professionals don't take care of their business by using the many Darex word processing, duplicating, copying and typing products."

A spokesperson for the defense said that no appeal was planned except for the natural appeal of low prices, excellent service and product flexibility that is a standard of the Darex Company.

public and the potentially negative impact of prolonged incarceration on offenders. Therefore, the Board elected to consider reducing the length of confinement for certain offenders, while minimizing the threat of public safety, by using information predictive of their likelihood of re-offending after release. Thus, the greater the likelihood of no parole violation, the greater the potential for reduction in length of confinement. Conversely, as the likelihood of felony violation increases, the potential for reduction decreases. Furthermore, the Board elected to consider larger reductions in length of confinement for property offenders than for offenders convicted of more serious offenses (e.g., Murder 2, Assault, Sexual Molestation, etc.).

For each offender group, statistical analyses produced various offender attributes which are significantly related to parole performance. In these guidelines, the presence of an attribute is a positive trait related to no violations. The Public Safety Score is the total number of attributes possessed by an offender. Within each offender group, offenders with high scores have higher probabilities of no violations than those with low scores. If the probability of no parole violations associated with the offender's score is 50% or greater, the offender is eligible for a reduction in addition to earned "good time" credits.

The reduction decision is made after a period of incarceration at a Parole Review Meeting.

Offenders are classified by offense behavior, sex, and type of admission into one of the following nine groups for the purpose of determining their Public Safety Score and possible reduction of prison term:

Male Offenders

- Homicide/Assault/Sex Offenses
- Robbery Offenses
- Property Offenses
- Drug Offenses
- Parole Violators

Women Offenders

- Person Offenses
- Property Offenses
- Drug Offenses
- Parole Violators

Characteristics found to be associated with successful parole performance included:

Pre-admission factors

- Juvenile record
- History of drug abuse
- Adult criminal record
- Employment record two years prior to admission
- Personal/Community stability

Current incarceration factors

- Institution conduct
- Work release participation
- Employment upon release

A Case Illustration

In conclusion, the following case illustration is presented to demonstrate how the guidelines are applied to actual cases seen by the Board.

In January of 1978, John McDougall was arrested for burglary at the apartment of Mrs. T. A. Green and was subsequently convicted of Burglary II in a jury trial in March of 1978. At the trial, Mrs. Green testified that on the night of January 11, 1978 she awoke around 11:00 p.m. to find McDougall searching through dresser drawers in her bedroom. She demanded that he leave. He approached the bed threatening "shut up or you'll be sorry". She further stated that McDougall demanded to know where she kept her money. When she failed to answer, he struck her on the face and demanded that she get out of bed and get money for him. Mrs. Green protested that she could not do this as she was bedridden. At this point, a neighbor, who nightly checked on Mrs. Green's welfare, knocked on the front door. McDougall fled through the back door. The neighbor called the police. McDougall was picked up shortly thereafter in an alley behind Mrs. Green's residence.

The offense apparently involved little planning. Mrs. Green was not injured.

The possible number of months of prison term under the Board's minimum term guidelines are listed on page 21 in Table 1; the months of prison term for the behavioral factors of McDougall's burglary are listed on the right.

The Board is concerned about the repetition of criminal behavior and believes that the offender should be held responsible for the degree to which current behavior is a continuation of past behavior. Each prior conviction therefore, adds time to the minimum term.

John McDougall had two prior felony convictions from California. He was convicted of auto theft in August 1973 and burglary in January 1974. He served 18 months in a California correctional facility for these offenses.

For property offenders, each prior property offense adds six months to the minimum term. However, the prior record term shall not exceed the current offense severity score term. Offenses against persons add more. In this case, McDougall has two prior property offenses. These would add 12 months to the guideline minimum term. See Table 2, page 21.

No set of guidelines can be sufficiently detailed to account for every individual circumstance. In order to accommodate these subtle variations, a range of about 12½% has been created around each guideline term.

In the case of McDougall, the guideline range would be 60 to 78 months. The Board would set a term within this range unless extenuating circumstances are present.

Act Severity
Prior Record

Guideline Minimum Term

57 Months
+ 12 Months
69 Months

Public Safety Score Factors

John McDougall has never been committed to a juvenile institution, but he has two prior felony convictions as an adult. While he was not a hard drug user, he did have a history of marijuana use. During the two years prior to the current admission he had been living with friends and had not worked during this period. McDougall's score for the pre-admission items on the Public Safety Score is 6.5. He can earn an additional 4.5 points during his incarceration.

In this instance, let's assume that McDougall earned three additional points while in prison. He received two points because he committed no infractions. He earned one point for successful completion of work release. He did not have a verified job upon release.

McDougall's total public safety score is 9.5. See Table 3, page 21.

A score of 9.5 for property offenders translates to:

- 1) A 52.4% chance of having no parole violations during the 18 month period after release;
- 2) A 16.9% chance of having a technical or mis-

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NOTIFICATION FORM

Name _____ Number _____

Offenses _____

Base Time _____ Mos.

Aggravating Circumstances

_____ Mos.

_____ Mos.

_____ Mos.

_____ Mos.

Prior Record

_____ Mos.

_____ Mos.

Total (Guideline Term) _____ Mos.

Guideline Range:

_____ Months to _____ Months

demeanor violation during the 18 month period after release; and

- 3) A 30.7% chance of having a felony violation during the 18 month period after release.

With this score, he is eligible for a seven-month reduction in addition to earned "good time" credits. Based upon his score and the chances of parole violations associated with his score, McDougall is eligible for a reduction of 16% (seven months) in his minimum term in addition to earned "good time" credits.

Reconsideration Guidelines

The Board set a minimum term of 69 months for John McDougall.

The laws of the State of Washington provide that for good institutional behavior, McDougall will be eligible to earn a reduction of one-third of his minimum term. These are referred to as "good time" credits. He must be recommended for this reduction by the institution superintendent and have it approved by the Parole Board.

In addition to the "good time" reduction, the Board will consider an additional reduction of the minimum term. McDougall's public safety score indicates that he has better than a 50% likelihood of no violations on parole. He is, therefore, eligible for a reduction at his



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parole review hearing after having served all but one month of his projected length of confinement.

McDougall's Projected Length of Incarceration Based on Guidelines

McDougall's minimum length of confinement can be computed as soon as his minimum term is set:

Minimum Term	69 Months
Possible "Good Time" Credits	-23 Months
Sub-Total	46 Months
Possible Public Safety Score Reduction	- 7 Months
Projected Length of Confinement	=39 Months

If McDougall earns all of his possible "good time" credits and the Board grants the seven-month public safety factor reduction, his projected length of confinement for this offense is 39 months.

TABLE 1
MINIMUM TERM GUIDELINES
CONVICTION INFORMATION FORM

PROPERTY - PART I

Possible Months		McDougall's Months
3	BASE TIME (for any property offense)	3 months
9	Added base time for burglary	9 months
6	Victim was vulnerable	6 months
6 to 24	Degree of planning	0
0 to 15	Objective of planning	0
6	Residential Property Crime	6 months
6	Vandalism	0
6	High Speed Chase	0
6	Damage to Vehicle (other than own)	0

PROPERTY - PART II TO BE COMPLETED WHEN VICTIM IS THREATENED/INJURED

12	Victim threatened/assaulted	12 months
12	Victim physically/mentally handicapped	12 months
12 to 30	Victim vulnerable by age	0
9 to 24	Method of violence	9 months
6 to 24	Injury to victim	0
3 to 24	More than one victim involved	0
12	Kidnapping	0
9 to 24	Non-consensual sexual abuse	0
9 to 24	Additional incident of non-consensual sexual abuse	0
	ACT SEVERITY TIME	57 months

TABLE 2
NUMBER OF MONTHS ADDED FOR EACH PRIOR RECORD ENTRY BY ADMISSION FELONY CLASS¹

PRIOR RECORD CLASS	ADMISSION FELONY CLASS							
	Murder	Sex Offense	Robbery	Assault	Man-Property slaughter	Drug Offense	Other ²	
Murder	96	48	48	48	48	18	24	18
Sex Offense	24	24	12	12	12	6	6	6
Robbery	24	12	24	12	12	6	6	6
Assault	24	12	12	24	12	6	6	6
Manslaughter	48	12	12	12	36	12	12	12
Property Offense	6	6	6	6	6	6	6	6
Drug Offense	6	6	6	6	6	6	6	6
Other	6	6	6	6	6	6	6	6

¹Note: Each column represents the felony class of the current admission. Each figure in a column is the number of months added for each entry within the prior record classes.

²Other offenses include felony classes Felon in Possession of a Firearm, Escape and all other types of criminal acts not included in the previous felony classes.

TABLE 3
PROPERTY OFFENDER (MALE)

Score	PREADMISSION ITEMS	McDougall
0	JUVENILE RECORD	
	Committed to juvenile institution	0
	Never committed to juvenile institution	1.5
0	HISTORY OF DRUG ABUSE	
	Use of opiates	0
1.0	Use of substances other than opiates, marijuana or hashish	0
2.0	Use of marijuana or hashish	2.0
3.0	Never used drugs	0
0	ADULT CRIMINAL RECORD	
	Five or more felony convictions	0
0.5	Four felony convictions	0
1.0	Three felony convictions	1.0
1.5	Two felony convictions	0
2.0	One felony conviction	0
	EMPLOYMENT RECORD—TWO YEARS PRIOR TO ADMISSION	
0	Never employed	0
1.5	Unemployed for <i>entire</i> two years prior to admission	1.5
3.0	Unemployed for more than six months during the <i>two</i> years prior to admission	0
4.5	<i>Not</i> unemployed for more than six months during the <i>two</i> years prior to admission	0
	PERSONAL SUPPORT—LIVING ARRANGEMENT PRIOR TO ADMISSION	
0	Living alone	0
0.5	Living with siblings or friends (including cohabitation)	0.5
1.0	Living with parents, parents and siblings, or other relatives	0
1.5	Living with spouse and/or children	0
	SCORE ON PRE-ADMISSION ITEMS	6.5
	CURRENT INCARCERATION ITEMS	
	INSTITUTIONAL CONDUCT	
0	One or more "serious" infractions	0
1.0	One or more "general" infractions	0
2.0	No infractions	2.0
	RELEASE EMPLOYMENT/WORK-TRAINING RELEASE PROGRAM INVOLVEMENT	
0	Employment not verified, unsuccessful termination from program	0
0.5	Employment not verified, did not participate in program	0
1.0	Employment not verified, successful termination from program	0
1.5	Verified employment, unsuccessful termination from program	0
2.0	Verified employment, did not participate in program	0
2.5	Verified employment, successful termination of program	0
	SCORE ON INSTITUTION ITEMS	3.0
	TOTAL SCORE	9.5

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Assuring Educational Rights: WAC 392-171 Hearings

By JEFF TOLMAN

A client comes to you complaining that the local school district is ignoring his child's educational disability. Or that the special education program the school has his child in is inappropriate. What courses of action are available to air and resolve these grievances?

On November 29, 1975, President Gerald Ford signed into law P.L. 94-142. The basic thrust of this act is to require that if a child has any school problem which may be related to a handicap, then school districts are legally obligated to work with the parents to identify the problems and establish an educational plan to remedy, as best as is possible, the handicap.

Our state scheme is codified in RCW 28A.13 and WAC 392-171. As of this writing, one Superior Court case (*Mary Skidmore v. Spokane School District*, Spokane County Superior Court No. 249995, 1979) and approximately a dozen administrative review decisions constitute the WAC-392-171-hearing case law. The area is new and expanding. Though few lawyers have experienced a WAC 392-171 hearing, projections indicate that twelve percent of all students may qualify for some type of special education and related services. More attorneys will be involved in these hearings as parents and attorneys gain understanding of students' and parents' rights and school districts' responsibilities regarding special education.

A review of our state scheme should assist in recognizing special education issues as they arise.

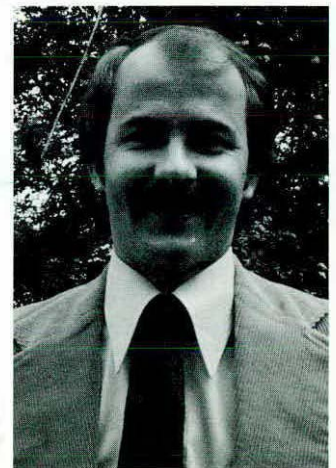
Pre-Hearing Procedure

When a student is suspected of having a handicapping condition a "focus of concern" is filed by the school district or parent. If the district initiates the focus of

concern, then written notice is given to the parents indicating the child has an educational problem and that within fifteen school days the school district will determine whether the child should be assessed. WAC 392-171-395.

If the school district declines to assess a child contrary to the parent's request or if the parents refuse to grant permission to assess the child contrary to the district's decision, then a hearing under WAC 392-171-500 should be instituted. The child must be fully assessed within thirty school days after consent to assessment by the parents or an order by an independent hearing officer granting assessment over the parent's objections. WAC 392-171-395(4).

An assessment must relate to the area of suspected disability and include discussions regarding the child's scholastic, physical and adjustment skills. WAC 392-171-400. It must be conducted by a multidisciplinary



Jeff L. Tolman practices law in Poulsbo and has served as a hearing officer in WAC 392-171 hearings.

team including at least one teacher or other specialist in the area of suspected dysfunction using more than one test instrument validated to assess problems in the involved area. The assessment result must include a summary of the student's condition and whether the student qualifies for special education and related services under state or federal law. WAC 392-171-405,430.

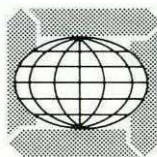
The parents have an absolute right to obtain an independent educational assessment of their child. WAC 392-171-435. Such assessment may be at public expense if the parents give written notice to the school district of the result of the district's assessment with which the parents disagree *and* request an independent educational evaluation at public expense. WAC 392-171-435(2) (a).

Within ten school days of receipt of a request for an evaluation at public expense the district has the option of initiating a hearing under WAC 392-171-500 to show the appropriateness of the district's assessment. If the district chooses not to hold such a hearing or the district's assessment is not upheld at the hearing, then the independent evaluation must be at public expense. WAC 392-171-435(2) (d).

Within thirty calendar days of the student's assessment, if the student qualifies for special education and related services, the student's regular classroom teacher, one or both parents, a representative from the district and

a member of the student's assessment team must meet to develop an Individualized Education Program (IEP) for the student. WAC 392-171-440(1). The parents are to participate in the development of the IEP to the maximum extent possible. The IEP shall include statements of (1) the student's present levels of performance; (2) annual educational goals; (3) required special education and related services, the duration thereof and to what extent the student can participate in regular classroom programs; and (4) objective criteria to evaluate whether the educational goals are being met. Within ten calendar days of the IEP meeting the district must give the parents written notice of the initial placement or the inability or refusal to make a special education placement. WAC 392-171-450. A hearing under WAC 392-171-500 is required if the school refuses to place the child appropriately or if the parents refuse to consent to the proposed placement.

A placement based on an IEP need not be the "best" available but "appropriate" (meet minimum legal standards) under state and federal law. *Marty S*, Special Education Cause 78-1, p. 22; *Todd B*, Special Education Cause 79-1, p. 4; *Roger K*, Special Education Cause 78-4, p. 6. Where (1) the school district's experts involved in the assessment, evaluation and establishment of an IEP are qualified, and (2) there was near unanimity



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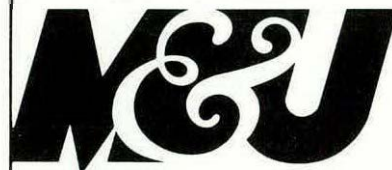
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by the school experts regarding the assessment and IEP, and (3) there was conformance with state and federal regulations regarding the assessment and IEP, the placement by a school district is presumed appropriate. *Marty S*, supra, p. 6; *Erik K*, Special Education Cause 78-1, p. 7; *John Mc*, Special Education Cause 79-7, p. 7. Only when the parents have rebutted this presumption does the burden shift to the district to show the placement is appropriate. *Eric P*, Special Education Cause 79-4, p. 10.

The parents' preference is not controlling with respect to appropriate programs. *Eric K*, supra; *Todd B*, supra. For example, a placement may be objected to legally on the basis of its distance from the child's home only if an equally appropriate education program is closer. WAC 392-171-455(1) (b); *Todd B*, supra, p. 8.

Disputes over the appropriateness of a child's placement may be resolved in a WAC 392-171-500 hearing.

Once a placement is made, it must be reassessed annually, and the child must be reassessed at least every three years. WAC 392-171-485. Parents are to be given notice whenever a district proposes to change the educational circumstances of the student or refuses to change the educational circumstances of the child per WAC 392-171-490 and 495, and must be accorded the same rights as with the initial placement of the child.

Hearing Procedure

Hearings under WAC 392-171-500 may be initiated to show the appropriateness or inappropriateness of an initiation of or change in the identification, assessment or placement of a handicapped student, or the special education and related services provided to the student.

The request for a hearing must be in writing, unless otherwise permitted by school district rule, explaining the complaint of the party, and describing the issues to be presented at the hearing, and a copy of the request must be mailed to the opposing party. WAC 392-171-500(2).

A hearing officer is initially contacted by the school district in which a request for hearing has been filed. (The Superintendent of Public Instruction has a list of state-trained hearing officers.) The hearing officer will contact the parents or, if known, parents' counsel to discuss his/her qualifications and answer any reasonable questions posed by the parties or their counsel. Either party has the right to file a written objection to a particular hearing officer if they believe the hearing officer will be biased in the cause. All objections to the hearing officer, argument related thereto and the disposition thereof are made part of the permanent hearing record. WAC 392-171-505(3).

The hearing officer will discover if parental consent was obtained by the school district prior to (1) conduct-

ing the preplacement evaluation, and/or (2) initial placement of a child in a special education program. WAC 392-171-490; WAC 392-171-395(4). If proper parental consent was given or if a hearing on the issue results in a ruling that an evaluation or placement is appropriate, then the hearing officer will discover if appropriate notice of procedural safeguards was given to the parents. This notice must be written in language understandable to the general public and provided in the parents' native language or other mode of communication used by the parents. WAC 392-171-495. The written notice should advise the parents of their:

A. Opportunity to examine their child's school records, WAC 392-171-555;

B. Right to an independent educational evaluation, WAC 392-171-435;

C. Right to prior notice of preplacement evaluation and initial placement of the child in a special education program, WAC 392-171-490;

D. Parental consent being required prior to a preplacement evaluation of their child and initial placement in a program, WAC 392-171-395(4);

E. Right to an impartial hearing officer, WAC 392-171-505;

F. Right to an impartial Due Process hearing, WAC 392-171-500;

G. Hearing Rights, including:

1. The right to be advised and accompanied by counsel and/or individuals with special knowledge. There is a question here regarding parent advocacy groups, where the advocates are not admitted to the state bar association. WAC 392-171-510(1) (b) allows parties to be represented by an attorney. WAC 392-171-510(1) (a) allows parties to be accompanied and advised by persons with special knowledge and training with respect to handicapped students. The two sections seem to indicate that non-lawyers can advise but not argue, cross-examine or present a party's case.

2. The right to an open or closed hearing;

3. The right to prohibit introduction of opposing party's evidence that has not been disclosed at least five days prior to the hearing;

4. The right to obtain a written verbatim record of the hearing;

5. The right to written findings of fact, conclusions of law and judgment, WAC 392-171-510;

H. Rights to have the child present at the hearing, WAC 392-171-510;

I. The child's status during the proceedings shall remain "as is" until a decision is rendered, WAC 392-171-535;

J. Timeliness of hearing and review, WAC 392-171-515(1);

K. Right to an administrative appeal, WAC 392-171-

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525; and

L. Right to a civil action, WAC 392-171-530(4).

If satisfactory notice of these procedural safeguards has not been forwarded to the parents, then the hearing officer will require that such notice be given prior to commencing a hearing. WAC 392-171-495(1).

The hearing is similar to a civil trial procedurally, except rules of evidence are more liberal. Any relevant evidence, even hearsay (see *Erik P.*, supra, p.6), is admissible, though any evidence not disclosed to the opposing party at least five days prior to the hearing is excludable. WAC 392-171-510(1) (d).

The burden of proof is a preponderance of the evidence. WAC 392-171-515(1) (a). Findings of fact, and conclusions of law and judgment must be mailed to the parties not later than forty-five days after the request for a hearing, unless this requirement is waived. WAC 392-171-515(1).

A party may appeal by giving written notice of appeal to the Superintendent of Public Instruction within thirty days after the hearing officer's decision is mailed. WAC 392-171-525(1). Each hearing officer's decision is reviewed and an independent decision is made based on a preponderance of the evidence. WAC 392-171-525(6) (e); *Todd B.*, supra, p. 2; *Keith S.*, supra, p. 6.

Constructive Exclusion

A significant doctrine is being developed through WAC 392-171 caselaw called "constructive exclusion". See *Marty S.*, supra; *Erik P.*, supra.

Constructive exclusion is a term referring to the fact that, especially in cases of students involved in special education, inaction or informal action to exclude a student from an appropriate special education program may have the same actual and legal result as a formal expulsion or suspension: "The right to an appropriate education has no meaning if it can be lost in the time-consuming process of a district hearing and a further appeal to SPI." *Erik P.*, supra., p. 11.

Constructive exclusion may be substantive or procedural.

Substantive constructive exclusion is based on the denial of the right to an appropriate education guaranteed by statute and administrative rules. In *Erik P.*, supra, the hearing officer ruled that the student had been denied an appropriate educational opportunity as required in WAC 392-171-325. The administrative review officer ruled that this denial was tantamount to substantive constructive exclusion because the student had been denied his right to an appropriate education for an entire school year.

Procedural constructive exclusion results when a school district fails to execute its affirmative duty to

notify parents of a child of their due process rights under state and federal special education law where the parents are not aware of these rights. *Keith S.*, supra, p. 16-17.

Punitive damages may be levied on the school district based on findings of constructive exclusion. *Erik P.*, supra, p. 11; *Keith S.*, supra, p. 16. The nature and extent of the hearing officers' and/or the Superintendent of Public Instruction's ability to impose and enforce punitive damages on school districts has not been fully defined, though arguably reimbursement, attorneys fees and costs are recoverable under a finding of constructive exclusion.

Conclusion

The area of educational rights is relatively new and expanding. To date the case law in Washington is minimal. Many substantive questions and procedural problems are arising as the area develops. For example: (1) Do the hearing officers have the ability to compel the attendance of witnesses? WAC 392-171-510(4) states "All parties . . . shall . . . upon request, exercise such authority and influence as they have to compel the attendance of witnesses required by another party." Because the Administrative Procedures Act does not apply to the hearings (see *Keith S.*, supra, p. 9), the only affirmative grant of power to compel witnesses appears to be found in federal law: 45 C.F.R. §121 a. 508(a) (2). The issue has not been ruled upon to date.

(2) If a child does not qualify for special education and related services under state guidelines, but qualifies under the broader federal guidelines, is the state required to provide special education and related services? See *Loren B.*, supra.

(3) Can attorney's fees and costs be awarded on a finding of constructive exclusion? Can a fine be levied? If so, how are these remedies enforced?

Other major issues unresolved include: Does the hearing officer have the power to subpoena documents? Sequester witnesses? Require the school district to pay for a court reporter when an electronic record of the hearing appears sufficient under WAC 392-171-510(1) (e)?

Based on the estimate that twelve percent of all school children may qualify for some special education and related services, our law regarding special education hearings, though presently in its embryonic state, is destined to touch many people. Hearings under WAC 392-171 will become more common as attorneys, parents and students begin to recognize and understand their rights and school districts' obligations.

Though there is "law" to be made and gaps to be filled, it is obvious WAC 392-171 is an area attorneys should be aware of and familiar with. □

WASHINGTON STATE BAR ASSOCIATION

AUDIT FOR FISCAL 1978-79

VON HARTEN & COMPANY
CERTIFIED PUBLIC ACCOUNTANTS
1000 Fourth Avenue, Suite 1000
SEATTLE, WASHINGTON 98101

To The Board Of Governors Of The
Washington State Bar Association

We have examined the statement of assets, liabilities and fund balances of the Washington State Bar Association as of September 30, 1979 and 1978 and the related statements of revenue and expenses, changes in fund balances, and changes in financial position for the years then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion the aforementioned financial statements present fairly the financial position of the Washington State Bar Association at September 30, 1979 and 1978, and the results of its operations, changes in its fund balances, and changes in its financial position for the years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

Von Harten & Company

December 10, 1979

Notes To Financial Statements

NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

a) Assets and liabilities, and revenues and expenses for the years ended September 30, 1979 and 1978 are

recognized on the accrual basis of accounting.

b) Furniture, equipment and leasehold improvements are stated at cost, less accumulated depreciation computed on the straight-line method. Furniture and equipment are depreciated over their estimated useful lives of from five to ten years and leasehold improvements are amortized over the shorter of the useful lives of the improvements or the lease period.

c) Dues are recorded by the Washington State Bar Association as revenue in the applicable membership period. Seminar registration fees are recorded as revenue in the period in which the seminar is held. Accordingly, unearned dues and seminar fees are included as deferred revenue in the financial statements.

d) The Legislative Fund is required to be maintained as a separate accounting entity. However, the purpose for maintaining all other funds as separate entities is for internal accounting purposes only.

NOTE 2 - FURNITURE, EQUIPMENT AND LEASEHOLD IMPROVEMENTS

The following presents the amounts of furniture, equipment and leasehold improvements at September 30, 1979:

Furniture and equipment	\$118,524
Leasehold improvements	64,056
	182,580
Less accumulated depreciation	75,009
	\$107,571

Depreciation expense for the year ended September 30, 1979 amounted to \$17,109.

NOTE 3 - LEASE COMMITMENTS

The Bar Association leases office space under a non-cancelable lease until June 30, 1987. The minimum rental commitments under the present lease are summarized below:

<i>Years Ended September 30</i>	
1980	\$105,037
1981	109,575
1982	112,817
1983	112,817
1984	112,817
1985-1987	310,247

During the year the Bar Association sub-leased a portion of its office space which resulted in a reduction of net rental expense of \$35,284.

NOTE 4 - CLIENTS SECURITY FUND

It is the estimate of management that with present restrictions, conditions and limitations pertaining to var-

Exhibit A

WASHINGTON STATE BAR ASSOCIATION STATEMENT OF ASSETS, LIABILITIES AND FUND BALANCES SEPTEMBER 30, 1979 and 1978

	1979	1978
Assets		
Cash		
Checking accounts	\$ 79,146	\$39,751
Savings accounts	660,247	522,870
Accounts receivable	42,932	18,283
Office supplies	12,740	13,942
Deferred costs and prepaid expenses	37,434	44,535
Furniture, equipment & leasehold improvements (Notes 1b and 2)	107,571	94,616
Total assets	<u>\$940,070</u>	<u>\$733,997</u>
Liabilities and Fund Balances		
Liabilities and deferred revenues		
Accounts payable	\$254,063	\$183,538
Deferred revenue (Note 1c)	275,530	216,720
Equipment contracts payable	9,593	—
	<u>539,186</u>	<u>400,258</u>
Commitments and contingent liabilities (Notes 3, 4, and 5)	—	—
Fund balances (Note 1a)	<u>400,884</u>	<u>333,739</u>
Total liabilities and fund balances	<u>\$940,070</u>	<u>\$733,997</u>

The accompanying notes are an integral part of these financial statements.

ious claims presently filed that the Bar Association's total present exposure to the Client's Security Fund does not exceed \$50,000.

NOTE 5 - EMPLOYMENT AGREEMENT

Effective June 16, 1978, the Bar Association entered into an employment agreement and retirement agreement with their Executive Director. The agreement requires no present funding, but constitutes a contingent liability depending upon performance of future services.

Exhibit B

WASHINGTON STATE BAR ASSOCIATION STATEMENT OF REVENUES AND EXPENSES YEARS ENDED SEPTEMBER 30, 1979 AND 1978

	1979	1978
Revenues		
Membership dues	\$ 937,715	\$724,128
Continuing legal education	556,095	392,841
Bar examination fees	217,950	186,025
Bar News	106,563	71,853
Convention	111,040	104,580
Interest earned	73,686	25,641
Legislative donations	17,115	25,646
Sections	67,988	66,757
Miscellaneous	67,773	22,124
	<u>2,155,925</u>	<u>1,619,595</u>
Expenses: (also see expenses by activity)		
Salaries	549,363	424,820
Payroll taxes and benefits	96,548	73,488
Rent and utilities	113,583	110,594
Postage and printing	78,715	53,266
Office expense	68,145	43,696
Public relations and support activities	117,203	80,755
Miscellaneous	5,617	9,694
Depreciation and amortization	17,604	15,220
Direct activity expenses		
Continuing legal education	431,768	273,119
Bar examination and admissions	169,582	148,677
Convention	125,744	100,815
Discipline	30,777	37,048
Bar News	95,280	82,162
Committees	47,349	21,824
Legislative	58,499	31,188
Sections	61,252	50,819
Client security claims	5,421	13,592
Lawyer referral service	16,330	8,975
	<u>2,088,780</u>	<u>1,579,752</u>
Excess (Deficiency) of Revenues Over Expenses		
General fund	43,650	19,233
Legislative fund	(7,817)	8,864
Section fund	9,479	17,872
Client's security fund	21,522	(6,851)
Bar foundation fund	311	725
	<u>\$ 67,145</u>	<u>\$ 39,843</u>

The accompanying notes are an integral part of these financial statements.

NEW ISSUE

FEBRUARY 1980

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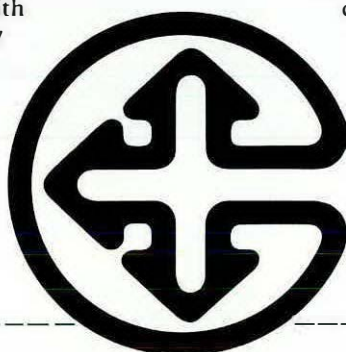
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Exhibit C

WASHINGTON STATE BAR ASSOCIATION STATEMENT OF EXPENSES BY ACTIVITY FOR THE YEARS ENDED SEPTEMBER 30, 1979 and 1978

	SEPTEMBER 30,	
	1979	1978
Revenue-Producing Activities:		
Continuing legal education	\$ 617,562	\$ 423,782
Bar examinations and admissions	256,452	211,548
Bar News	145,853	127,868
Convention	125,744	100,815
Sections	87,369	74,227
Legislative	70,926	56,168
Lawyer referral services	36,798	23,630
Other Activities:		
Discipline	\$ 285,278	\$ 247,386
Committees	88,486	62,980
Membership mailings and special projects	75,747	52,030
Public affairs	68,148	55,454
Conferences and meetings	65,575	45,910
Miscellaneous activities	61,720	48,762
Lawyer trust account audits	38,729	—
ABA and Western conferences	29,528	19,120
Legal intern and lawyer placement	29,444	16,480
Client security claims	5,421	13,592
	<u>\$2,088,780</u>	<u>\$1,579,752</u>

NOTE: Each of the above accounts includes a pro-rata allocation of administrative and overhead expenses as shown on the statement of revenue and expenses.

The accompanying notes are an integral part of these financial statements.

Exhibit D

WASHINGTON STATE BAR ASSOCIATION STATEMENT OF CHANGES IN FUND BALANCES YEARS ENDED SEPTEMBER 30, 1979 AND 1978

	1979	1978
General Fund		
Fund balance, beginning of the year	\$107,976	\$ 88,743
Excess of revenues over expenses	43,650	19,233
Transfers to other funds	(61,475)	—
Fund balance, end of the year	<u>90,151</u>	<u>107,976</u>
Legislative Fund (Note 1d)		
Fund balance, beginning of the year	10,120	1,256
Excess revenues (expenses)	(7,817)	8,864
Fund balance, end of the year	<u>2,303</u>	<u>10,120</u>
Section Fund		
Fund balance, beginning of the year	50,685	32,813
Excess of revenue over expenses	9,479	17,872
Transfer from General Fund	19,725	—
Fund balance, end of the year	<u>79,889</u>	<u>50,685</u>
Client's Security Fund		
Fund balance, beginning of the year	160,532	167,383
Excess revenues (expenses)	21,522	(6,851)
Transfer from General Fund	41,750	—
Fund balance, end of the year	<u>223,804</u>	<u>160,532</u>
Washington State Bar Foundation Fund		
Fund balance, beginning of the year	4,426	3,701
Excess of revenues over expenses	311	725
Fund balance, end of the year	<u>4,737</u>	<u>4,426</u>
Total fund balances, end of the year	<u>\$400,884</u>	<u>\$333,739</u>

The accompanying notes are an integral part of these financial statements.

Exhibit E

WASHINGTON STATE BAR ASSOCIATION STATEMENT OF CHANGES IN FINANCIAL POSITION YEARS ENDED SEPTEMBER 30, 1979 AND 1978

	1979	1978
Cash, beginning of year	\$562,621	\$554,612
Sources of funds		
From operations		
Excess of revenue over expenses	67,145	39,843
Add back expenses not requiring outlay of funds - depreciation and amortization	17,604	15,220
	<u>84,749</u>	<u>55,063</u>
Increase (decrease) in liabilities and deferred revenue		
Accounts payable	70,525	(22,725)
Equipment contracts payable	9,593	—
Deferred revenue	58,810	3,656
	<u>223,677</u>	<u>35,994</u>
Uses of funds		
Additions for furniture, equipment and leasehold improvements	30,065	8,257
Increase (decrease) in other assets		
Accounts receivable	24,649	(13,441)
Office Supplies	(1,202)	2,609
Deferred costs and prepaid expenses	(6,607)	30,560
	<u>46,905</u>	<u>27,985</u>
Increase (decrease) in funds		
Checking	39,395	(37,064)
Savings accounts	137,377	45,073
	<u>176,772</u>	<u>8,009</u>
Cash, end of year	<u>\$739,393</u>	<u>\$562,621</u>

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Issues Pending In Supreme Court, May Term

Court Commissioner Geoffrey Crooks has advised the Bar News that the following issues are presented in cases set for hearing during the May term of the state Supreme Court. He states that this summary of issues has been presented for informational purposes only and does not purport to state the precise legal issues in each case. Subject headings generally are those suggested by the Commissioner, but we have abbreviated case names and deleted other identifying information.—Ed.

ATTORNEY AND CLIENT

AUTHORITY OF ATTORNEY—STIPULATIONS

■ On what types of matters will a party be bound by stipulations of his counsel made without his knowledge or authorization? *Graves v. P.J. Taggares Company*, No. 46800.

CIVIL RIGHTS

EMPLOYMENT DISCRIMINATION—BONA-FIDE OCCUPATIONAL QUALIFICATION—HANDICAPS—EPILEPSY

■ Did the trial court properly grant summary judgment against plaintiff job applicant on the basis that freedom from epilepsy is a bona-fide occupational qualification under RCW 49.60.180(1), WAC 162-16-020(2), and WAC 162-22-070(3)? *Rose v. Hanna Mining Company*, No. 46853-2.

SEX DISCRIMINATION

■ Where a private lessee of a municipally-owned and managed place of public accommodation charges female spectators less on "Ladies Night" for admission to a professional sport's event than the amount charged male spectators, does this constitute a violation of the Equal Rights Amendment (Const. art. 31, §1) or the Law Against Discrimination (RCW 49.60)? *MacLean v. First Northwest Industries of America, Inc.* and the *City of Seattle*, No. 46735.

CONFLICT OF LAWS

COMMUNITY PROPERTY—DEBT INCURRED IN ANOTHER STATE—SEPARATE OR COMMUNITY OBLIGATION

■ Is the creditor on an obligation incurred by one spouse in a non-community property state where both spouses were domiciled, restricted in its recovery to the separate property of the obligor spouse (as the term "separate property" is defined by Washington law) when the spouses move to Washington? *Pacific Gamble Robinson Company v. Lapp*, No. 46837.

COURT RULES

ER 609(a)—ADMISSIBILITY OF PRIOR CONVICTIONS

■ May ER 609(a) be interpreted to permit the prosecution to introduce evidence of defendant's prior second-degree rape conviction

to impeach his credibility in the event that he testifies in his own behalf in a first-degree rape prosecution? *State v. Alexis*, No. 46271.

CRIMINAL LAW

EVIDENCE—POLYGRAPH TEST—EXCULPATORY EVIDENCE—PROSECUTOR'S DUTY TO DISCLOSE

■ Did the trial court err in admitting testimony that a key witness for the prosecution had been administered two polygraph tests?

Should the defendant's motion for a new trial have been granted, because of the prosecution's failure to disclose to the defense exculpatory evidence which came to the attention of the prosecution during the trial? *State v. Sutherland*, No. 46754.

EVIDENCE—TAPE RECORDED CONVERSATIONS—FEDERAL—INVESTIGATIONS

■ Are tape recordings of conversations lawfully intercepted by federal agents during the course of a bona-fide federal investigation, but which were not lawfully intercepted pursuant to RCW 9.73.030, admissible as evidence in a state prosecution? *State v. Williams*; *State v. Caliguri*, No. 46795.

JUVENILES—SENTENCING—USE OF PRIOR OFFENSES—EQUAL PROTECTION

■ Under the provisions of the Juvenile Justice Act of 1977, ch. 13.40 RCW, can previous offenses be employed to enhance a sentence on a current offense even when the juvenile offender has not yet been sentenced on the prior offenses and thus has been afforded no time to reform?

Did the sentence imposed on petitioner violate equal protection in that he was subject to greater punishment for a series of crimes committed in two counties than he would have been had the same series of crimes been committed in a single county? *In re Schellong*, No. 46922-9.

PAROLE REVOCATIONS—DECISIONS—RETROACTIVITY

■ Should this court's decision in *In re Akridge*, 90 Wn. 2d 350, 581 P.2d 1050 (1978), be retroactively applied to parole revocations which were accomplished administratively, without the hearing required by *Akridge*, prior to the date of that decision? *In re Haverty*, No. 46491.

PUNISHMENT—STATUTES—MANDATORY MINIMUM TERM

■ Is the Board of Prison Terms and Paroles required to set a 7½-year mandatory minimum term of confinement pursuant to RCW 9.95.040(2), for an offense committed while armed with a deadly weapon by a person previously convicted of a felony, even for those offenses which are punishable by a maximum 5-year imprisonment under RCW 9A.20.020(c)? *In re Wilson*, No. 46331.

REVIEW—PLEA BARGAINING—EFFECT

■ Is a defendant who pleads guilty to a substantive offense and to a habitual criminal information, pursuant to a plea bargain, precluded from thereafter challenging on appeal the sufficiency of the information or the existence of the crime charged? *State v. Majors*, No. 46765.

SENTENCING—POSSESSION OF FIREARM—TRIAL COURT DISCRETION UNDER RCW 9.41.040

■ Does RCW 9.41.040, which provides for punishment of imprisonment "for not less than one year nor more than ten years," give the trial court discretion to fix a maximum term of imprisonment of less than 10 years? *State v. Bishop*, No. 46733.

WELFARE FRAUD—PUNISHMENT—MAXIMUM SENTENCE

■ Does RCW 9A.56.100 rather than RCW 74.08.331 control what is the proper penalty for welfare fraud? *State v. Sass*, No. 46786.

CRIMINAL PROCEDURE

DEFENSE WITNESSES—EXCLUSION OF TESTIMONY

■ Was it proper to refuse to permit the defense to present the

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testimony of a psychiatrist who had examined the defendant, either on the ground that the psychiatrist had not been named on the defense witness list, as required by a pretrial order, or on the ground that the testimony would have been improper rebuttal evidence? *State v. Thacker*, No. 46751.

TIME FOR TRIAL—COURT RULES—CrR 3.3

■ Does the time for trial specified in CrR 3.3(b) commence to run from the tenth day following a defendant's arrest even when the defendant is initially charged by a complaint filed in district court? *State v. Edwards*, No. 46792.

TIME FOR TRIAL—COURT RULES—CrR 3.3—WAIVER

■ Did the defendant waive his right to trial within the 60-day period specified by CrR 3.3 when his counsel at arraignment stated his willingness to set trial in February 1978 and failed to object to a February setting which was untimely under the rule? *State v. White*, No. 46431.

TIME FOR TRIAL—COURT RULES—JCrR 3.08—CHANGE OF VENUE

■ Did the Court of Appeals err in holding that when a defendant moves in District Court for a change of venue which results in a trial delay, such delay is chargeable to the defendant and cannot be used in computing the time for a speedy trial under JCrR 3.08? *State v. Lindbo*, No. 46729.

DIVORCE AND DISSOLUTION

CUSTODY OF CHILDREN—MODIFICATION

■ Does modification of a child custody decree require a showing of changed circumstances even when the original decree was entered by default?

Under what circumstances should a child be found to have become integrated into the family of the non-custodial parent such as to warrant modification of a prior custody decree under RCW 26.09.260(1)(b)? *Timmons v. Timmons*, No. 46571.

FIXTURES

See Sales—Bona-Fide Purchaser—Owner Not in Possession—Duty to Record.

Courtright Cattle Co. v. The Dosen Co., No. 46824.

INDEMNITY

PROHIBITIONS ON INDEMNIFICATION—WORKMEN'S COMPENSATION

■ In an action for personal injuries brought by a workman against a defendant other than his employer, where both the defendant and the employer were negligent, may the defendant recover over against the employer in a third-party action based upon a written indemnification agreement despite the bar of ch. 51.04 RCW to any action by the workman directly against his employer? *Redford v. City of Seattle, et al.*, and *Jorgensen Steel Company v. Jacobson et al.*, No. 46769.

INVERSE CONDEMNATION

COMPENSATION—LIMITATIONS ON RECOVERY OF ATTORNEY'S FEES—CONSTITUTIONALITY

■ Is the 1977 amendment to Washington's inverse condemnation statute, RCW 8.25.075, which purports to limit recovery of attorney's and expert witness fees to only those cases where the judgment awarded to the plaintiff exceeds by at least 10 percent the settlement offered 30 days prior to trial, constitutional?

Should a 10-year statute of limitations control in an airport noise inverse condemnation case and, if so, must all the elements of prescription be present before the statute begins to run? *Petersen v. Port of Seattle*, No. 45817.

JURY

RIGHT TO TRIAL BY JURY—LEGAL OR EQUITABLE ACTION

■ Did the trial court err in striking plaintiffs' demand for a jury trial where plaintiffs sought, in addition to relief which was equitable in nature, damages for breach of lease provisions, breach of a duty of good faith dealing, unfair and deceptive practices in violation of the Consumer Protection Act, and tortious interference with business relationships: *Brown et al., v. Safeway Stores, Inc.*, No. 46897-4.

LIMITATION OF ACTIONS

DISMISSAL AND NONSUIT—VOLUNTARY NONSUIT—DENIAL AND APPEAL—TOLLING STATUTE

See prior opinion: *Elliott v. Peterson*, 92 Wn.2d 586, 599 P.2d 1282 (1979).

Elliott v. Dirk Peterson, et al., No. 45964

MENTAL HEALTH

COMMITMENT—INSANITY ACQUITTAL—STATUTES APPLICABLE—CONSTITUTIONALITY

■ Were the felonies of which petitioners were acquitted by reason of insanity "less serious acts" within the meaning of *Alter v. Morris*, 85 Wn.2d 414, 420, 536 P.2d 630 (1975), such that subsequent commitments of petitioners pursuant to the provisions of RCW 10.77, rather than RCW 71.05, were constitutionally impermissible as violative of due process or equal protection? *In re Harris* (first case), No. 46710-713 (consolidated cases).

PATIENTS MEDICAL RECORDS

COMMON-LAW RIGHT OF ACCESS—ACTIONS—

MOOTNESS

See Public Disclosure Act—Coverage—Exemptions—Patient Medical Records

Oliver v. Harborview Medical Center, No. 46168.

PHYSICIANS AND SURGEONS

MEDICAL MALPRACTICE—INFORMED CONSENT—ALTERNATE DIAGNOSTIC PROCEDURES

■ On the facts presented in this medical malpractice action, was petitioner entitled to an instruction on informed consent regarding the availability of alternate diagnostic procedures, under the doctrine of *Gates v. Jensen*, 92 Wn.2d 246, 595 P.2d 119 (1979)? *Keogan et al., v. Holy Family Hospital et al.*, No. 46690.

MEDICAL MALPRACTICE—STATUTE OF LIMITATIONS

■ Does that portion of the statute of limitations for medical malpractice actions, RCW 4.16.350, as originally enacted in 1971, which provided that actions shall be brought within 3 years of "the date of the alleged wrongful act," begin to run no later than the last day of treatment by a physician? *Bixler v. Bowman*, No. 46813.

PUBLIC ASSISTANCE

SUPPORT—DEPENDENT CHILDREN—OBLIGATION OF STATE—AUTHORITY OF COURT

■ Does the Superior Court have authority to order the Department of Social and Health Services to pay for some or all of the medical care of a child who has been determined to be a dependent child and a ward of the state? *In re Feldman*, No. 46782.

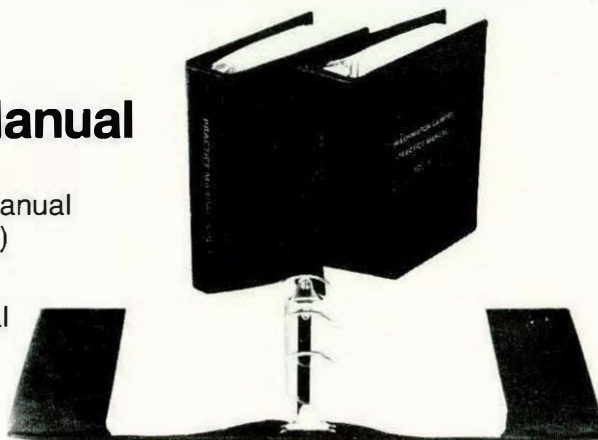
PUBLIC DISCLOSURE ACT

COVERAGE—EXEMPTIONS—PATIENT MEDICAL RECORDS

■ Are a patient's medical records maintained by a public hospital

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"public records" within the scope of the Public Disclosure Act, RCW 42.17, and if so, are they exempt from disclosure even to the patient whom they concern?

Was the plaintiff's claim based upon a common-law right of access to one's own medical records properly dismissed as moot, and if not, does such common-law right exist? *Oliver v. Harborview Medical Center et al.*, No. 46168.

RAILROADS

FEDERAL EMPLOYEES LIABILITY ACT—ACTIONS AGAINST EMPLOYEES FOR PROPERTY DAMAGES

■ Whether in an action brought by railroad employees against a railroad for damages under the Federal Employers Liability Act (FELA), 45 U.S.C. §51, et seq., the railroad may bring a third party complaint or counterclaim against railroad employees for property damage on the basis of the employees' negligence or wanton or willful misconduct? *Stack v. Chicago, Milwaukee, St. Paul & Pacific Railroad Company v. Preston*, No. 46861- 3.

REAL PROPERTY

PERPETUITIES—RESTRAINTS ON ALIENATION—RIGHT OF FIRST REFUSAL

■ Is the right of first refusal to purchase real property unlimited in time, either unenforceable as an unreasonable restraint on alienation or subject to and violative of the rule against perpetuities? *Robroy Land Company, Inc. v. Prather*, No. 46697.

SALES

BONA-FIDE PURCHASER—OWNER NOT IN POSSESSION—DUTY TO RECORD INTEREST

■ Does the purchaser of personalty who leaves the goods in the

possession of the non-dealer seller have a duty to record or otherwise give constructive notice of ownership to protect his interest from creditors or subsequent vendees of the seller?

Under what circumstances should a lessor's interest in a lease of personal property, with an option to buy, be considered a security interest subject to article 9 of the Uniform Commercial Code?

Did the Court of Appeals properly conclude that the property at issue remained personalty and did not become a fixture? *Courtright Cattle Company v. The Dolsen Company and Cotten*, No. 46824.

SEARCHES AND SEIZURES

DETENTION FOR QUESTIONING—BASIS

■ Did the police officer have a constitutionally permissible basis for the stop, frisk and questioning of this defendant, such that the subsequent seizure of narcotics in the defendant's pocket and defendant's arrest were valid under the Fourth Amendment? *State v. Hobart*, No. 46784.

OBJECTS IN PLAIN VIEW

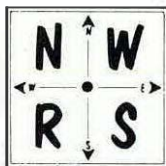
■ Was the warrantless seizure of drugs in a dormitory room, made by a police officer who had observed some of the material in plain view while he was standing in the hallway looking through the open door of the room, permissible under the Fourth Amendment? *State v. Chrisman*, No. 46750.

SECURITY INTERESTS

LESSOR OF PERSONAL PROPERTY—LEASE WITH OPTION TO BUY

See Sales—Bona-Fide-Purchaser—Owner Not in Possession—Duty to Record Interest

Courtright Cattle Co. v. The Dolsen Co., No. 46824.



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STATUTES

ENERGY FACILITIES SITING ACT. ch. 80.50 RCW— CONSTITUTIONALITY—ADMINISTRATIVE PROCEDURES

■ Is the Energy Facility Siting Act, RCW 80.50, constitutional, and did the procedures employed by the Siting Council in approving this facility conform to the requirements of the act? *Skagitonians Concerned About Nuclear Plants, et al., v. Evans et al.*, No. 46137.

TORTS

DAMAGES—LOSS OF SPOUSAL SERVICE AND CONSORTIUM

■ Should a wife be allowed to recover for loss of consortium and loss of services of her husband when he is injured by the negligent conduct of a third party? *Lungren, et al., v. Whitney's Inc.*, No. 46703.

INTOXICATING LIQUORS—LIABILITY OF LIQUOR VENDOR

■ May a commercial liquor vendor be held liable to the estate of a vendee who is fatally injured following consumption in the vendor's establishment? *Barrie, et al., v. Hosts of America, Inc.*, No. 46860-5. ☐

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The Board's Work

Credit Union Is "Fastest Growing" in State History

By JAY V. WHITE

LA CONNER, May 16-17 — The Board of Governors received a report here on the development of the two-year-old Washington State Bar Association Credit Union, and the news was all good.

"We have the fastest growing credit union in the history of the state of Washington," declared Everett attorney Kenneth Rice who is president of the credit union's Board of Directors.

Although not the largest in absolute terms, the WSBA Credit Union is the most successful among 800 state and federally chartered credit unions in Washington in terms of the percentage of available members participating and in percentage of deposits, Rice said.

As of March 31, the credit union had deposits in excess of \$600,000, loans outstanding in excess of \$850,000 and a membership of 1100. The state-chartered credit union, which is an organization legally separate and distinct from the bar association, is open to membership by law firms, their employees, lawyers, their families, employees and bar associations.

Loans are made at 12 percent interest, and accounts earn interest at 6 percent at last report.

"Our loan portfolio is maturing, and we never have had a loss on a loan," Rice said. "Only two loans in the history of the credit union have ever been delinquent which is defined to mean that a payment is more than 45 days past due."

Rice added that the success of the credit union should "answer the skeptics who said that lawyers, particularly young lawyers, would be bad credit risks, and that employees of lawyers either would be bad credit risks or could obtain credit from other sources."

Rice cited several reasons for the credit union's success, which has received national attention among bar associations. First, law firms have accepted the concept of payroll deductions as a means of making deposits in the credit union which has helped keep funds regularly available for loans. Second, the bar association contributed to the success of the credit union through the Board of Governors' decision to place \$25,000 of the bar association funds into a credit union account. Finally, the credit union has been aided significantly by the management services provided by Raymond Glynn, a graduate of the University of Puget Sound Law School, who heads the Washington Credit Union Center which administers a number of Washington credit unions.

During the coming year, Rice anticipates that the credit union will be able to open a branch office in Tacoma and also be able to offer its members a share

draft program which would permit a member to write a draft, similar to a check, against his or her interest-bearing account.

Rice requested that the Board give consideration to depositing an additional \$25,000 of bar funds with the credit union, and encouraged members of the Board who have not already done so to open accounts "with a first deposit of \$500". Inquires about membership in the credit union should be directed to WSBA Credit Union, 120 Sixth Avenue North, Seattle, Washington; telephone: (Area 206) 682-8034.

OTHER BOARD ACTIONS . . .

■ **POLITICAL CAMPAIGNS**—The Board decided not to conduct a preferential poll of the membership (such as has been conducted in the past in the case of candidates for the state Court of Appeals and Supreme Court) as to candidates for state Attorney General; declined to provide the membership mailing list to political campaigns; and decided that no change should be made in the bar association's by-law provision which bars Board members from endorsing candidates for judicial or other law-related office.

■ **CODE OF PROFESSIONAL RESPONSIBILITY COMMITTEE**—The Board approved in principle a CPR opinion which remains to be drafted in final form which would provide that nonrefundable "retainers", described to a client as such, need not be deposited in attorney trust accounts, whereas "advance fee deposits" must be deposited in a trust account until the fee is earned; approved a proposed CPR opinion that it would be unethical for an attorney representing a landlord in an unlawful detainer action to advise an alien tenant that failure of the tenant to vacate the premises will result in referral to the Immigration and Naturalization Service; and approved in principle an opinion by bar counsel Robert T. Farrell directed to the CPR Committee to the effect that DR 2-110 (B) (4), which makes an attorney's withdrawal from a case mandatory upon discharge by a client, supersedes RCW 2.44.040 (2), which prohibits a court from ordering an attorney to withdraw until the attorney's fee is paid, to the extent the two may be inconsistent.

■ **NORTHWEST WOMEN'S LAW CENTER**—The Board approved a request by Mary Ellen Hudgins on behalf of the Northwest Women's Law Center permitting that agency to make limited referrals of men and women with legal problems to state and local bar association referral services and to private attorneys.

■ **BAR NEWS**—The Board referred to the Editorial Advisory Board an inquiry as to whether the *Bar News* should accept political advertising.

■ **LEGAL AID COMMITTEE**—The Board approved a recommendation by the Legal Aid Committee that a task force be appointed jointly by Stephen Whitehouse, chairman of the Committee, and Denny Allen of the state Bureau of Aging, which would be independent of the bar association. The task force will study legal needs of the elderly and the degree to which these needs are being met.

■ **FAMILY LAW SECTION**—The Board referred to the Family Law Section an inquiry as to whether there should be a bar-funded study to review the adequacy of child support schedules used in this state.

■ **COURT COMMISSIONERS**—The Board denied a request by King County Presiding Judge T. Patrick Corbett that King County Court Commissioners be permitted to change their bar membership from "active" to "honorary".



RESOLUTIONS COMMITTEE

Filing Deadline for Resolutions to Be Presented at Annual Business Meeting

Anyone desiring to have a resolution presented at the Annual Business Meeting should file it with George McIntosh, Chairperson of the Resolutions Committee, 505 Madison, Seattle, Washington 98104.

Resolutions must be presented to the Resolutions Committee at least 20 days before the Annual Business Meeting, that is, on or before August 18, 1980.

All resolutions must be accompanied by a written report (the resolution and report not to exceed a combined total of 1,000 words) explaining the resolution.

Preliminary Notice of Special Public Hearing on Resolutions and of Publication Deadline

The Resolutions Committee of the Bar will, as usual, hold a public hearing on September 3, 1980 in Seattle to consider the views of the proponents and opponents of resolutions to be presented to the membership of the Bar at the Annual Business Meeting. The time and location of the hearing will be announced in the next *Bar News*. In addition, in an effort to allow more time to those presenting views and in an effort to give the members of the Committee more time to consider the resolutions and to request any additional information which might be helpful to the Committee, an advance session of the public hearing will be held prior to the Annual Business Meeting at the offices of the Bar Association, 505 Madison, Seattle, Washington, on August 29, 1980 at 10:00 A.M. Proponents and opponents of the resolutions are urged to attend the August 29th session if at all possible, and, if not, to present their views in concise written form for consideration by the Committee at that session. Presence at or absence from the August 29th session will not affect any right under the by-laws to present views at the September 3rd hearing. At that hearing, preference in presenting views will be given to those with viewpoints which were not expressed at the earlier session.

If a resolution is to be published in the *Bar News* before the Annual Business Meeting, the by-laws pro-

vide that it must be received by the Resolutions Committee at least 60 days prior to the Annual Business Meeting, on or before July 7th. In addition to resolutions received in time for publication, the next issue of the *Bar News* will contain further details regarding the purpose, function, and personnel of the Committee and the time and location of the September 3rd hearing.

Resolutions Committee Members

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JUDICIAL COUNCIL REPORT

By WARD WILLIAMS AND HARRY REINERT

Reforms End "De Novo Appeal" From District Court

A notable advance in reducing some of the congestion and delay in Washington's courts occurred when HB 1422 was signed into law on April 4, 1980 by the Governor. The bill, guided through the legislative process by Senator Dan Marsh and Representative Irving Newhouse, chairman of their respective Judiciary Committees, was the result of several years of work by members of the Washington State Bar Association and the state judiciary. Most significantly, the superior courts soon will hear appeals from district and municipal court decisions primarily on the basis of correction of error of law, not by trial de novo as has been the practice since territorial days. This change will reduce both the number of cases appealed to superior court and the time and cost required in reaching final disposition.

As in many other states, Washington's district and municipal courts evolved in response to needs for local decision on misdemeanors and on relatively minor civil

disputes. No legal training was required by the early statutes for the hundreds of justices of the peace and police judges serving the courts of the states' cities, towns and precincts. This, in addition to the variation in procedures, made correction of error type review from these courts impractical. To improve the system, comprehensive legislation was passed in 1961, The Justice Court Act. This was a major judicial reform resulting in expanded jurisdiction, lawyer judges in areas with substantial populations, clarified venue, and providing for uniform procedures.

In 1978, the Bar Association's "Committee on Court Congestion and Delay," Bradley Jones, Chairman, recommended that the civil jurisdiction of district courts be increased, with accompanying authorization for these courts to record their proceedings for purposes of appeal. The legislature responded by increasing from \$1,000 to \$3,000 the civil jurisdiction of district courts. This increase became effective in May, 1979, with a further increase to \$5,000 scheduled for July, 1981. In anticipation of this legislation, the Judicial Council chairman, then Chief Justice Charles Wright, appointed a 20-person task force which included lawyers and judges from all levels of the state's court system. The charge to the task force was to

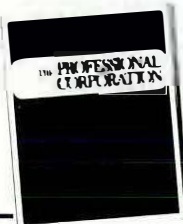
recommend changes in statutes and court rules to avoid congestion that might otherwise result from the added work the increased jurisdictional limit will mean for district courts.

The task force recognized that the 1961 Act had produced its intended effect. The much-improved district and municipal courts, staffed with trained judges, are competent to handle increased case loads and to conduct trials reviewable for error of law only. The structure and jurisdiction of courts are matters for the legislature. Procedures, though, are developed and implemented by the courts. Because a method for correction-of-error review of judgments of courts of limited jurisdiction had not yet been devised, a subcommittee of the Judicial Council task force was created to propose an acceptable method. This committee consisted of King County Superior Court Judge T. Patrick Corbett as chairman, Commissioner Joseph Thibodeau of the State Court of Appeals, and Karl Tegland, Judicial Council Attorney. The subcommittee proposed comprehensive rules which were studied and modified by the task force as a whole. Afterwards, the proposal was considered by the Judicial Council which adopted it with minor changes. The Judicial

Ward Williams practiced law and served as a District Court Judge in Whatcom County prior to his appointment to the State Court of Appeals. He is chairman of the Judicial Council Task Force which recommended the reforms created by HB 1422.

Harry Reinert is a staff attorney for the Judicial Council and for the Judicial Council Task Force.

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Council "Style Committee"—Malcolm Edwards, Virginia Binns and Dan Reaugh, polished the proposed rules which are now pending in the Supreme Court.

The scheme developed by the task force calls for electronic recording of the proceedings of district and municipal courts. At the conclusion of a case, the judge will

state on the record the decision of the jury or the court and the reasons for that decision if by the court, including the judge's determinations of relevant disputed questions of fact.

When an appeal is filed in superior court, the notice of appeal is to contain the usual information along with a statement of claimed errors. Upon receipt of the notice, the superior court will assign the case to a designated judge for decision, then set a date for argument. The record on appeal will consist of either an original or a duplicate of the electronic recording, the log prepared for the recording, docket entries, exhibits, pleadings, orders, and other papers.

Each party may file a brief, and the lower court may order briefs. It is expected that the judge to whom the appeal is assigned will have reviewed the record and the briefs before oral argument. Argument will be restricted to 10 minutes per side unless otherwise ordered. The

superior court review will be confined to claimed errors of law and to whether factual determinations are

supported by substantial evidence in the record (1) which were expressly made by the court of limited jurisdiction, or (2) that may reasonably be inferred from the judgment of the court of limited jurisdiction.

The decision of the superior court is to be in writing with the reasons for it noted. This decision becomes a final judgment of the superior court unless otherwise stated. Further review shall be by discretionary writ to the Court of Appeals.

HB 1422 strengthens the courts of limited jurisdiction in other ways. Heretofore, the jury has been selected by the judge choosing 18 registered voters at random, and the parties to the case striking names alternately until six names remain. The legislature incorporated in the bill the task force recommendation that the county clerk assume the duty of preparing the venire as now is the practice for superior courts with voir dire permitted. The bill also establishes the district court judge salary level at 90% of superior court judges, a measure which will aid in attracting the highest caliber lawyer to the district court bench.

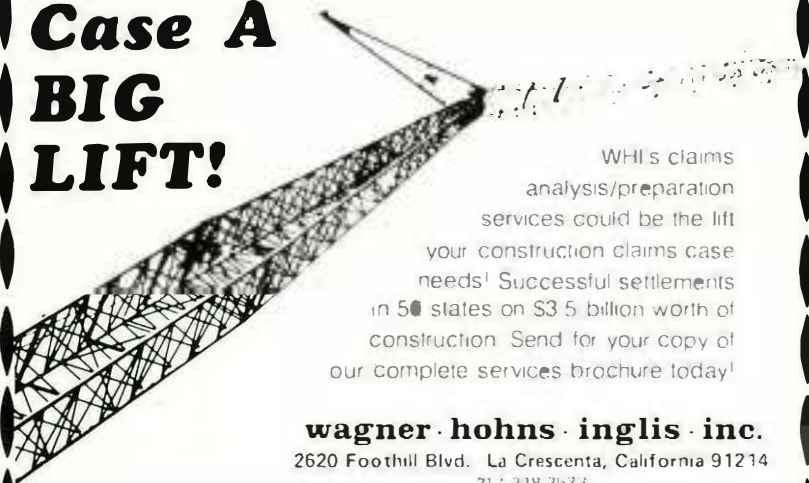
HB 1422 and the review rules submitted to the Supreme Court essentially complete the reform of the courts of limited jurisdiction commenced by the 1961 Justice Court Act. ☐

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JUDICIAL COUNCIL REPORT

By **KARL TEGLAND AND HARRY REINERT**

Judicial Council Attorneys

New Legislation of Interest

In the March edition of the *Bar News* it was reported in this column that the legislature had made significant changes in adoption procedures. The legislation, enacted in 1979, provided that the termination of the relationship between the child and the child's natural parents must be memorialized by court order rather than by the written consent of the parents. A large number of adoptions in 1979 were done under pre-1979 procedures, and their validity was in serious doubt.

In the 1980 legislative session, Rep. Rick Smith, an attorney and member of the Judicial Council, sponsored new legislation to validate adoptions which failed to comply with the 1979 amendments and to return to the previous practice of obtaining a consent from the natural parents. The new legislation, which was drafted with the assistance of the Judicial Council staff, has been enacted as Ch. 85, Laws of 1980. The new legislation contained an emergency clause and took effect immediately.

Other 1980 legislation sponsored or supported by the Judicial Council included:

— legislation giving the Court of Appeals discretionary authority to review the action of an administrative agency without an intermediate review by the superior court. Ch. 76, Laws of 1980. The new law is designed to conserve judicial time in cases where an appeal to the Court of Appeals would be likely regardless of the superior court outcome.

— legislation authorizing the Supreme Court to estab-



Harry F. Reinert (left) and Karl B. Tegland (right) are staff attorneys for the Washington State Judicial Council.

lish a system of electronic recording in courts of limited jurisdiction and to establish new procedures for appeals from those courts. The new legislation also contains provisions improving the method of jury selection in district courts, increasing the filing fee in civil cases, and making a number of other adjustments in statutes pertaining to courts of limited jurisdiction. As of this writing the bill had not yet been signed by the governor or given a session law number, but executive approval is expected. The Judicial Council will be proposing court rules to implement the new legislation, including rules to replace the trial de novo in superior court with an appeal on the electronic record from most courts of limited jurisdiction.

— legislation amending the provisions which will decriminalize most traffic offenses. The new law establishes a misdemeanor penalty for failure to respond to a traffic infraction notice, eliminates the statutory requirement that appeals be by trial de novo, and delays the effective date of the entire traffic infractions act until January 1, 1981. Several other housekeeping provisions were also included. Ch. 128, Laws of 1980. The Judicial Council is developing court rules to implement the statute. It is expected that the proposed rules and a penalty schedule will be published in the near future by the Supreme Court for comment by the bench and bar. □



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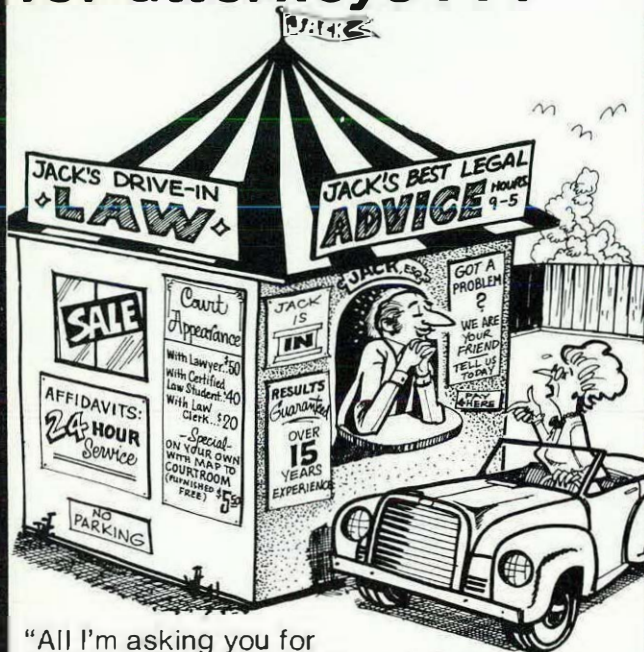
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The Brethren Woodward and Armstrong Look at the Supreme Court

John J. Michalik

Director of Continuing Legal Education

Seldom has a book about the law or the legal profession attracted the sort of attention, from within the profession and without, which has been bestowed upon *THE BRETHREN*. The book has been reviewed, with extensive commentary and analysis of not only its content but also its sources, be they former clerks, Justices or former Court employees, of information so often and at such length as to render another "book review" unnecessary; and in any event the allotted space for this column precludes a full scale review. Undaunted, however, we present here a quasi-review confined to the book's major themes and its strengths and weaknesses.

THE BRETHREN covers the 1969 through 1975 Court terms, from the appointment of Warren Burger to the year following the retirement of William O. Douglas. In brief, the book presents the reader with four or five major themes or controlling threads.

First, on a broad and sweeping scale, we see the swing of the majority on the Court from the libertarian days of Earl Warren to an initial conservatism, corresponding to and with the Nixon appointments, to what now seems to be a prevailing middle of the road majority with the center, as the book concludes, ". . . in control." Representing those respective positions, the figures of William J. Brennan, Jr., Burger and Potter Stewart emerge as, quite clearly, the central figures of the book. The emergence of those figures, and their predominant role in the book, is the result not only of the aforementioned swings on the Court but, and not without consequence, also of the extent of the information available to the authors and, to a degree, their own views of the issues and figures involved. The actions and thinking of these three members of the Court are by far the most developed in the book. In the case of Brennan and Stewart this may be the combined result of greater input from their former clerks, the authors' own "leaning" toward the more liberal wing of the Court and, possibly, input from those Justices themselves. The amount and depth of detail involved in descriptions of the actions, thinking and feelings of Brennan and Stewart lend some support to those who have speculated that these two were among the "several" Justices who consented to interviews by the authors.

Such is clearly not the case with regard to the Chief Justice. As the authors note in the book's Introduction, Burger ". . . declined to assist us in any way." The overall impression of Burger conveyed in *THE BRETHREN* is not a complimentary one. The Chief Justice is portrayed as, among other things, a poor opinion writer,

a man perhaps overly cognizant of and concerned with his position as such, and a person determined to leave his imprint on the Court. On the latter point, the book is replete with instances of Burger withholding his vote in major cases until the end in order, according to the book, to control assignment of the opinion and, in somewhat the same vein, attempting to assign the opinion even in cases in which he was not a part of the majority. To some extent the portrayal of Burger is affected by an anti-Nixon, anti-Burger point of view on the part of the authors: a point of view one becomes particularly aware of in the discussion of Watergate and the Nixon tapes case.

The positions of Burger, Brennan and Stewart as central figures does not mean that the other members of the Court are ignored. Indeed, insights into the make-up of the other Justices provide strong secondary themes and are among the real strengths of the book. The development of Harry Blackmun, the running commentary on Thurgood Marshall, and insights into all members of the Court during the period covered are generally well done. The portrayal of Douglas, right through his illness and the difficulties the other members of the Court had in getting him to retire after he had "retired", is particularly good.

THE BRETHREN has a number of minor weaknesses which are disturbing, particularly to the lawyer-reader.

Without detailing those, they are, on balance, more than made up for by the book's strengths. To some extent, any reader's view of the book is necessarily colored by his or her own political leanings and conception of the Court, and its members, as such. If you read it, and on balance I think you should, be aware of your own predispositions and the fact that, whatever those predispositions may be, you will probably not come away with a "middle of the road" reaction.

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- This course has been designed for the lawyer or accountant who seeks a short but comprehensive study of the major tax considerations bearing upon investment decisions. It is intended that the level of discussion be appropriate for those who are acquainted with fundamental principles of Federal income taxation, either through practice or study, but will be not accessible only to the highly experienced tax advisor. Accordingly, while the course will explore a variety of sophisticated securities, real estate and tax shelter transactions, the business lawyer or accountant who does not spend most of his/her time on tax matters will profit from the study of materials and discussion of problems.

Federal Income Taxation of Partnerships and Partners

by

Professor Stephen A. Lind
Hastings College of Law

- This course will be concentrated introductory course, as well as an update, on the fundamentals of the federal income taxation of partnerships and partners. The program is an 18 credit hour course based on problems and materials distributed in advance to registrants.
- The course has been designed for the lawyer or accountant who is engaged in tax or general practice and desires an introductory "short course" in the principal aspects of the taxation of partners and partnerships. It is intended that the level of discussion of concepts and problems be appropriate for one who has achieved a foundation in the fundamental principles of Federal income taxation, either through practice or courses of study.

Both courses have been approved by the Washington State Bar Association (for the above credit hours) and by the Washington State Board of Accountancy for CLE credits.

REGISTRATION: The fee for the course is \$275. The fee includes materials, parking permits, and snacks for breaks.

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

Disciplinary Board Policy of Cooperation

The Disciplinary Board of the Washington State Bar Association brings to the attention of members of the Association the following Supreme Court Rule:

DRA RULE 2.6

Respondent Attorney

Responsibility. It shall be the duty and the obligation of an attorney who is the subject of a disciplinary investigation to cooperate with the Local Administrative Committee, State Bar Counsel or bar staff as requested, subject only to the proper exercise of his or her privilege against self-incrimination, where applicable by:

- (a) Furnishing any papers or documents;
- (b) Furnishing in writing a full and complete explanation covering the matter contained in such complaint; and
- (c) Appearing before the Committee at the time and place designated.

The Board has noticed an increase in the number of attorneys who have failed to cooperate in connection with disciplinary investigations. Accordingly, the Board has adopted the following policy in instances of this sort:

The attitude of the Board is that the failure to cooperate is, in fact, an individual independent breach of discipline and intends to pursue disciplinary sanctions relative to such breaches.



BENTON-FRANKLIN REPORT

By STEPHEN T. OSBORNE

Congratulations are in order to **John Lindsey** and **Mark Kuffel** who recently became partners in the firm of Peterson & Shea. John holds down the fort in the Kennewick office and Ed and Mark are in the Pasco office. **George Critchlow** has left his dad's firm, Critchlow and Williams, and is now teaching at Gonzaga Law School and administering their legal clinic. We will miss George's smiling face.

Mike Johnson just returned from an extended trip to Hawaii sporting a great tan and a mustache that would be the envy of "Snidely Whiplash". **Al Mouncer**, formerly Benton County Deputy Prosecuting Attorney has joined **Dick Quigley's** staff at Washington Public Power Supply System. The void left by Al's departure will be filled by two new additions, **Dan Arnold** and **Mike Sandona**. Dan is a recent graduate of Southwestern University School of Law in Los Angeles and recently passed the state bar before joining the Prosecutor's Office. Mike Sandona is a graduate of Gonzaga Law School and comes here after a brief stint in Alaska and Seattle.

Franklin County Deputy prosecutors, **Mike Kinnie**, **Scott Timmons** and **Irene Cleavenger** have left that office and have relocated in private practice. Mike Kinnie is now an associate with the firm of Hurson, Felsted and Nickola; Scott Timmons and Irene Cleavenger are sharing space with **Joe Ramirez** and **Mike Larson** respectively.

The monthly meeting of the Benton-Franklin Bar Association was held recently with the featured speakers being representatives of a legal malpractice carrier. Unfortunately, they advised us shortly before the meeting that it would be necessary for them to cancel.

What's new?

SEATTLE-KING REPORT

By JAMES L. VARNELL

Honorable Mention. After much exhaustive research the list of best-dressed attorneys practicing in King County for 1979 includes: **Charles A. (Jack) Burgeson**, **Mike Cohen**, **Gary Faull**, **Deborah Fleck**, **Graham Greenlee**, **Sally Gustafson**, **Larry Finegold** and **Dwayne Richards**. However, each of the foregoing pales in comparison to the sartorial excellence of this year's "Alva Award" winner: **Jack Steinberg**.

Additional recognition: lowest batting average (softball) **Keith McClelland**; lowest batting average (Seattle Municipal Court): **Tim Fishel**; most times mentioned in this column, least times requested, and most libel suits threatened: **Thomas Bucknell** and **Robert G. Wallace**; most drastic post-40 hairstyle revision: **James Grubb**.

Also deserving special recognition is the feat of a Seattle attorney which is unmatched by any other legal work known to this correspondent: the obtaining of a trial date in King County Superior Court within this decade.

Recent Associations. **James H. Bauer**, **William M. Bauer**, **Ron Bergman**, **Eric L. Freise** and **James P. Moynihan**, formerly members of the law firm of Detels, Draper & Marinkovich announce the formation of a new partnership under the name of Bergman, Bauer & Freise at the Fourth & Blanchard Building. **Mark J. Rosenblum** has become associated with Beresford, Booth & Baronsky. **Robert H. Westinghouse**, formerly with the United States Attorney's Office has joined Cohen, Andrews & Keegan, P.S. **John E. Shaw** and **Christopher L. Otorowski** have joined Bassett, Gemson & Morrison as associates. **Robert O. Marritz**, **Peter M. Vial** and **Bradley D. Stam** have become

partners in Culp, Dwyer, Guterson & Grader and **Robert D. Stewart**, **David R. Koss**, **Ann S. Carey**, **James E. Hadley** and **Kathleen L. Albrecht** are now associates of the firm. **David T. McDonald** has become a director of Shidler, McBroom, Gates & Baldwin and **Karl J. Quackenbush** has become an associate. Sax and MacIver announces that **Stephen C. Kelly**, P.S. has become of counsel with the firm. **P. Arley Harrel** and **William J. Leedom** have become members of Williams, Lanza, Kastner & Gibbs and during the past year **Mark S. Davidson**, **Richard E. Graves**, **Kenneth E. Petty**, **Thomas C. Hughes**, **Suzanne C. Louy**, and **William H. Robertson** have become associates of the firm. **Jack R. Cluck** and **Paul Coughlin** are now serving as counsel to Houghton, Cluck, Coughlin & Riley, P.S.C. and **Robert Olson**, **Linda J. Strout** and **Janis K. Stanich** have become associated with the firm. **Thomas M. Walsh** has opened his office at 909 Seattle Tower. **Jerome Shulkin**, **A.J. Hutton, Jr.** and **Thomas N. Bucknell** have formed Shulkin, Hutton & Bucknell, Inc., P.S. and **Zachary Mosner** has become associated with the firm.

John S. Congalton has opened his law office at 3822 Seattle First National Bank Building, 623-8388.

James F. Tune and **Thaddas L. Alston** have become members of Bogle & Gates and **Dennis G. Stenstrom**, **Sally H. Saxon**, **Stephen P. Johnson**, **Richard J. Wallis**, **Lewis Taylor Egan**, **Richard D. Vogt**, **William H. Wagner**, **Douglas G. Mooney**, **Andrew A. Guy**, **William G. Clark**, **Bryce L. Holland, Jr.**, **Lynn Edelshtein Du Bey**, **Jeffrey R. Masi** and **Bruce A. King** have become associates.



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King County Superior Court Motions Procedure

The following procedures will be operative as of December 1, 1979, and will continue in effect until further notice. Attorneys may wish to retain a copy of this information.

COORDINATOR: The permanent Civil Motions Coordinator is Lori Mercerau, Room E-917. Her telephone number continues to be 583-4623.

CONFIRMATION: Pursuant to court rules promulgated in 1977, all motions set on the calendar before the Civil Motions Judge, whether set at 9:30 or at 10:30, must be confirmed by telephone or in person, or the motion will be stricken. The Coordinator can confirm motions *two* days before the motion is scheduled to be heard (2:00-4:00 pm) and from 8:30 to noon *one* day before the motion is scheduled.

Special Settings must be confirmed with the judge directly.

SUBMISSIONS: Extra copies for the judge, if any, of motions, supporting memoranda and affidavits, and other pertinent paperwork must be submitted to the Coordinator in room E-917, directly. She will assemble the papers and give them to the judge at the proper time.

CONTINUANCES: LR 40(2c) provides that a motion may be continued only one time by motion of counsel. To postpone a case more than one time, it must be re-noted.

SPECIFIC MOTIONS:

Dismissal: Motions for dismissal will be heard on the Summary Judgment Calendar, daily at 10:30.

Early Trial Date: Motions for early trial date will be heard by the Court Commissioners, and do not require confirmation. However, if selection of a trial date involves *oversetting* the trial calendar, the motion must be heard by the Presiding Judge, as must motions to continue trial dates.

Briefly Noted



Family Motions: Motions in domestic matters will, as a rule, be heard by the Family Motions Commissioner, Stan Stone, in W-355 (583-4629). However, motions for *Summary Judgment* in dissolution cases will be heard on the Civil Motions Calendar at 10:30 am.

NOTICE: Please remember that the court requires the Note for Motion Docket to be received by the Clerk's Office a full five working days prior to the scheduled date. At most times, notice will be sufficient if received by the Clerk on the same day of the week as the motion is scheduled, but one week earlier (i.e., a motion scheduled to be heard on Tuesday the 14th must be received on or before Tuesday the 7th). Of course, where there are intervening court holidays, notice must be commensurately longer.

Copies of this information will be available in room E-917, office of the Civil Motions Coordinator.

Products Liability Seminar to be Held in Idaho

The University of Idaho, College of Law and Office of Continuing Education will sponsor a two-day seminar entitled "Products Liability Refresher and Update" at the Red Lion Motor Inn in Boise on Thursday, June 19th and Friday, June 20th, 1980. The program will include a summary of Idaho and general products liability law; three "update" lectures (procedure, substance and evidence); general analyses of plaintiffs' and defendants' trial strategies; and, a full day of applications of principles, including demonstrations of opening statements and closing statements and examination of witnesses.

Cost of the program is \$140. For full details or to pre-register, contact Lou Piotrowski at the Office of Continuing Education or Lee Eckhardt at the College of Law.

King County Superior Court Document Filing Procedure

Notice

The King County Superior Court Clerk requests that legal documents to be filed should be prepared for filing as follows:

- a. If a legal document consists of more than one page, staple pages together.
- b. If more than one legal document having the same cause number is to be filed, the documents may be paperclipped together.
- c. Verify the King County caption of the case.
- d. Be sure that the King County cause number is correct before filing legal documents.

Please do not staple documents having the same cause number to-

gether.

It is possible that several documents stapled together could be entered in the legal record as *one* document.

Reminder

Attorneys and persons filing new cases are reminded that original documents once filed cannot be "handed back" immediately after filing. These documents must be processed and placed in the court file prior to being checked out. Certified copies of the documents may be purchased at the Cashier's Window at the time the original case documents are filed.

Lee L. Newman, 83, of Seattle, died March 30. He was admitted to the Bar in 1926.

Edward F. Stern, Sr., 74, of Seattle, died April 7. He was admitted to the Bar in 1928.

In Memoriam

Elwood Hutcheson, 77, of Yakima, died December 19. He was admitted to the Bar in 1925.

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Saturday, June 28, 1980, Condon Hall

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During the lunch hour there will be an informal reception in the faculty lounge of the Law School.

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**For further information: Francia Luessen, Director of
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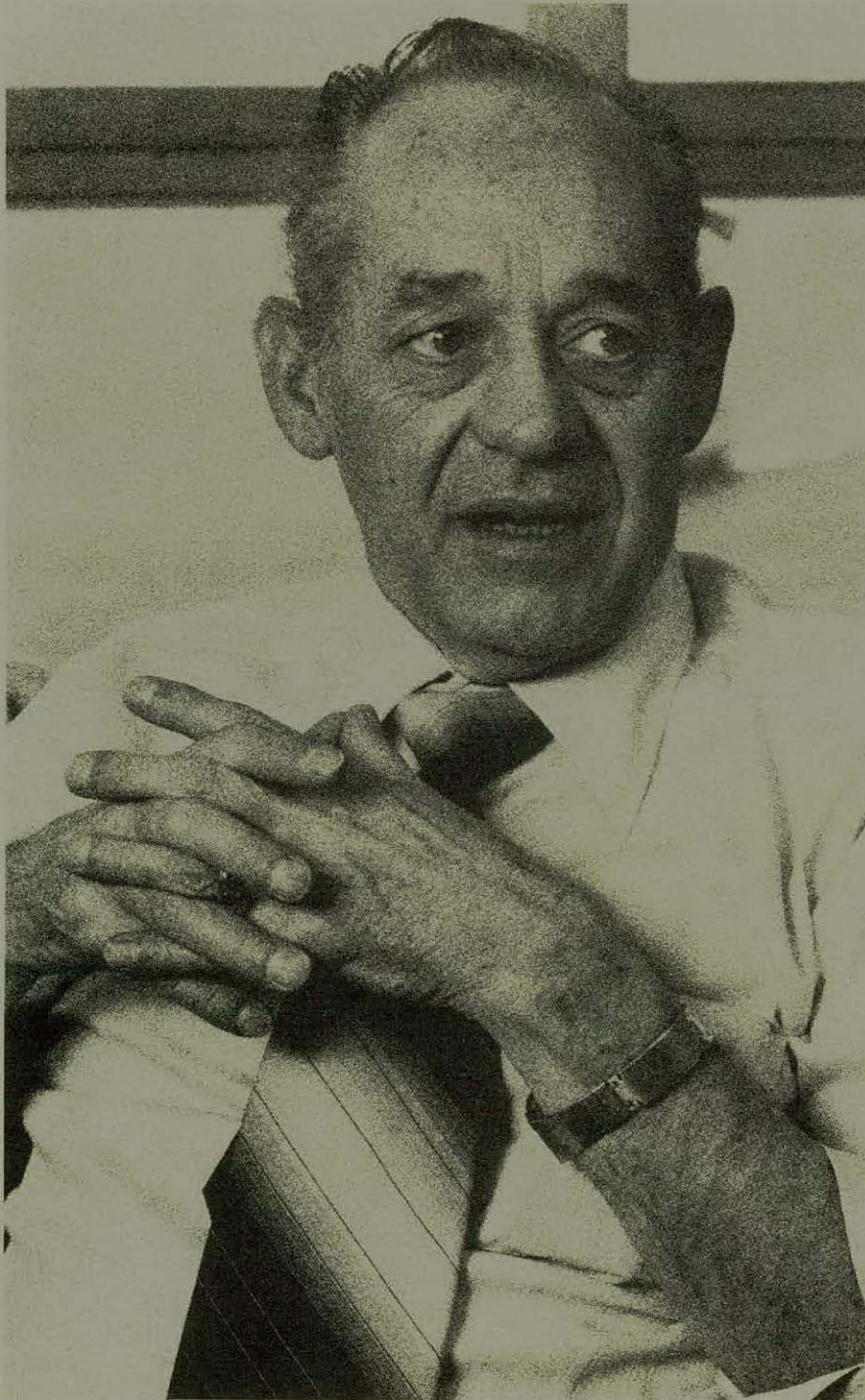
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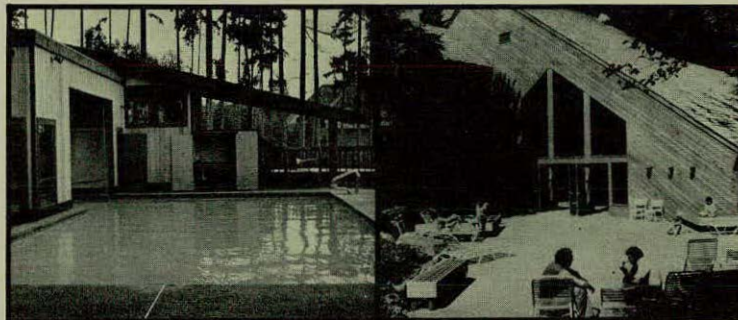
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