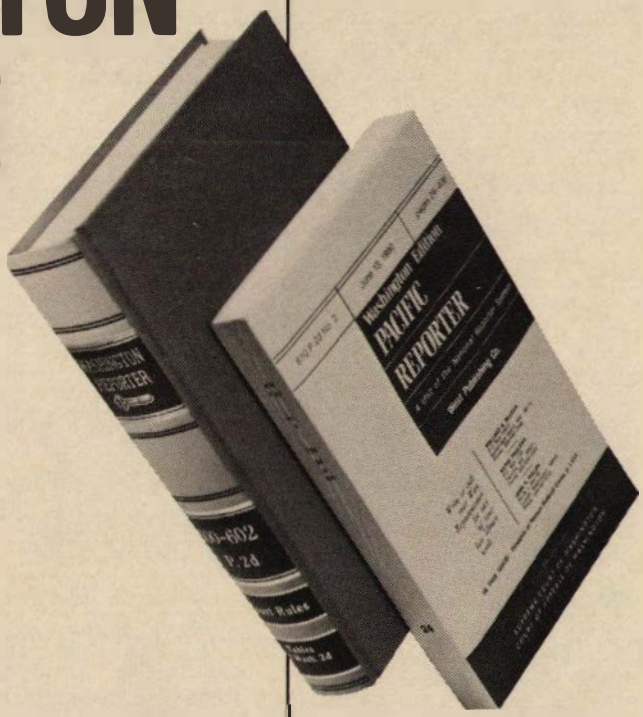
Volume 35, Number 2
February 1981

WASHINGTON STATE BAR NEWS

CORRECTING THE CORRECTIONAL SYSTEM

West's WASHINGTON REPORTER



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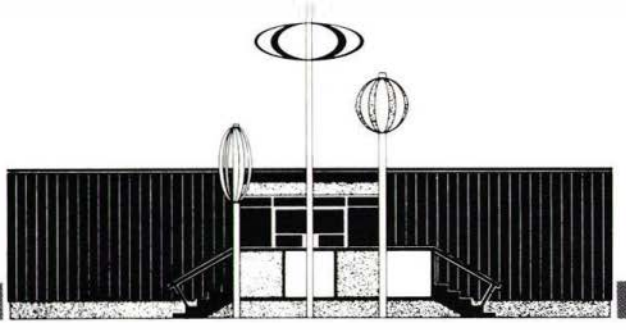

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Volume 35, Number 2
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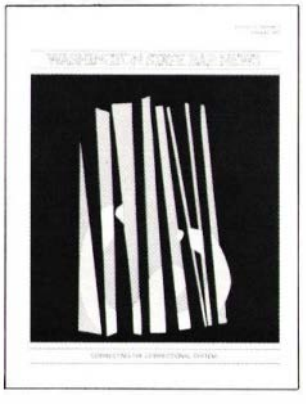
WASHINGTON STATE BAR NEWS

Our Cover



No one is very happy with Washington's correctional system, but opinions differ on what is wrong and what to do about it. The cover, entitled "Behind Bars", is a cardboard and computer paper paste-up by S. Reisler.

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Letters

A Note of Appreciation

Editor:

In the Bar Association, as well as in other organizations, what makes these associations and their associated benefits, such as publications, a success, is that there are those who for some unknown reason put in a lot of effort and time. This is usually neither appreciated, rewarded, nor remembered.

I would expect that out of approximately 10,000 lawyers who receive this magazine, Mr. White will be fortunate to receive 50 notes of appreciation such as this. Most do not even know him, myself included, but I want to make sure my little note of appreciation is mailed in so that maybe he will receive at least "50."

CLIFTON W. COLLINS

Ephrata

[*Rest easy. Jay White received more notes of appreciation than the* Bar News *could ever publish!* —Ed.]

Praise for White

Editor:

Congratulations on your selection as the editor of the *Washington State Bar News* to succeed Editor Jay White. During Editor White's tenure the *Bar News* grew to a magazine of national prominence. Several times I started letters to Editor White commending him upon the improvement in the magazine, but because we are close friends I was reluctant to provide him with the satisfaction of such direct praise.

Instead, let me offer you my congratulations on your appointment, wish you the very best of luck, and caution you that, as I am sure you already know, Editor White is a very hard act to follow.

THOMAS N. BUCKNELL

Seattle

"Congratulations? Most people have offered me their condolences."–Ed.

Editors' Identities Unmasked

Editor:

I have read each of the Editor's Pages for quite some time, and I think I know something about the type of individual who has been writing these pages. I have information that we have had the same editor for the past 20 years. The names have been changed merely to protect the innocent. I know that Mr. Reisler is just a pen name for Mr. White, and Mr. White is a pen name for various editors over the past 20 years.

Just remember, I'll be watching and reading for confirmation of my suspicions and I will take voluminous notes of similar writing styles to prove my case.

Jay, I will miss your writing style.

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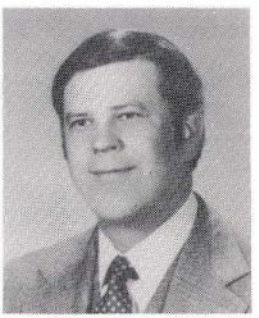

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Reaction to Jail Alternatives

Editor:

I was not privy to your cover letter describing "Time and Punishment: A Proposal for Repopulating the Jails" understandably, therefore, I decided you were "mishuga" (i.e. out-to-lunch).

I recall that you seemed totally unphased by, prepared for and almost jubilant at my terse introduction. "Are you for real?" I asked, prepared to go the full fifteen rounds. You were "prophetic" in surmising that some would miss the point of your article. It concluded:

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

You did in fact succeed in keeping the "pot boiling" until the community could devise some long-range programs to deal with the problem of overcrowded jails. Even the briefest scan at either of Seattle's major newspapers reflects an instant parallel between the King County jail and Mount St. Helens.

The following August, I was somewhat more prepared for (or should I say, less startled by) the interchange in the *Seattle Times* between the Bar editor-to-be and King County Prosecuting Attorney, Norm Maleng, concerning the King County Juvenile Court. I respect both of your opinions.

The interchange, nonetheless, reminded me of the following scenario: After a critic had attemped to mitigate his vigorous condemnation of his friend's painting with the pronouncement that his views should not, of course, be allowed to interfere with their friendship, his friend wrote back, "... next time I meet you, I shall knock you down, but I hope it will make no difference in our friendship."

I suspect the new *Bar News* editor will be memorable, unorthodox, but competent.

MIKE GOLDENKRANZ
Law Clerk to
Judge Stephen Reilly

Seattle

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Effective November 10, 1980, the charge for non-certified copies run on coin-operated duplicators located in the Public Access Area of the King County Superior Court Clerk's Office will be 25 cents per copy.

Tax Scams

by **Arturo A. Jacobs,**
I.R.S. District Director

At the Internal Revenue Service's most recent liaison meeting on December 3, 1980, with the members of the Tax Section of the Washington State Bar Association we discussed the very serious problem of the increase in the incidence of fraudulent tax shelters. Both the Service and the Tax Section are deeply concerned. The Service is fully committed to vigorous action against the promotion and use of abusive tax shelters, including prosecution in the case of fraudulent promotions.

The Service and the Tax Section agreed that for two important reasons we need to communicate with you concerning this problem. The reasons are: to provide you information to assist you in protecting your clients from abusive tax shelters; and to request your assistance in identifying fraudulent tax shelter promotions.

To assist you in advising your clients we would like to briefly describe several examples of shelters being promoted that may represent a fraud against or abuse of the tax laws.

There are a number of investments or methods of handling income/expenditures that are currently being promoted for almost the sole purpose of substantially reducing or eliminating taxes. However, the type of shelter—cattle, films, coal mining, oil leases, foreign trust—is not the determinant of whether or not the shelter is proper, questionable, or a fraud against our tax laws. The underlying facts and characteristics surrounding the specific shelter must be examined to make a judgment as to its propriety. There is, of course, nearly no limit to the different facts that could be the basis of judging a particular shelter to be abusive or fraudulent. However, examples of the most common factual patterns the Service is discovering in potentially fraudulent shelters in the State of Washington are as follows:

Non-Existent Assets. These are situations in which the asset involved in the shelter investment exists only on paper. In other shelters the asset exists in limited form—cattle, for example, but the number and value of the cattle are grossly exaggerated in the documents and records, and ultimately for tax purposes. False documents, check kiting, or the circulation of funds are used to give the appearance of and create documentation showing large expenditures for the asset. Another form of this deception is a promotion where the same asset is sold over and over again to different investors.

Document Backdating. Documents actually being executed and transactions actually occurring usually at the end of the calendar year or shortly after the beginning of a new year are backdated to support a desired tax effect.

Overstated Business Expenditures. This deception can take several forms. Sometimes partnerships are formed and funds are supplied by investors for a purported business venture—an example could be oil drilling. However, after the funds are paid by the partnership to a separate but controlled entity that is supposed to do the drilling work, the funds are channeled back to the original investors or used by the promoter for some other purpose—for example, the purchase of unimproved land or stock. Returns are filed claiming losses for the sham oil drilling.

Use of "Foreign" Organizations. This promotion often involves the creation of several business organizations on paper, including an overseas entity. Put simply, in these schemes the taxpayer does "business" with himself and in the process substantially "increases" his business costs.

For example the taxpayer pays and deducts a substantial amount for consulting fees to one of the entities formed which in turn pays a purported non-taxable foreign entity that "loans" or "gifts" the money back to the taxpayer.

Charitable Contributions. Schemes of this type sometimes involve the contribution of an artwork to a museum. Typically, the taxpayer purchases the item and simultaneously receives an appraisal through the promoter which is five to ten times greater than the purchase price. After the passage of a year, the contribution to the museum is made and claimed as a charitable contribution for tax purposes at the inflated amount.

Grossly Inflated Values. These promotions involve the formation of a "business" revolving around the aquisition of an asset of little or no value—it could be a recording or a motion picture, for example. The asset is purchased for a minimum amount of cash and a very large amount in non-recourse notes. Typically, tax reduction and not profit is the motive. Investment tax credit and sometimes depreciation are claimed on the inflated amount.

Common characteristics in the examples given are that the shelters have no economic reality and involve deception to create the appearance of legitimacy. Tax shelters with these characteristics are being promoted and sold, often for substantial amounts, to taxpayers in Washington State. One of our primary objectives in dealing with this problem is to immediately identify, investigate, and prosecute, if warranted, the promoters of schemes of the type indicated. Action, of course, will also be taken to correct the returns and tax liability of taxpayers utilizing promotions of this type.

We are asking for your help in identifying such schemes, consistent, of course, with the confidentiality of your professional relationships. If you become aware of a clearly abusive tax shelter promotion that you feel should properly be disclosed to the Internal Revenue Service, we ask you to contact Revenue Agent Brad Wittman, 915 Second Avenue, Mail Stop 160, Seattle, Washington 98174, Telephone: (206) 442-4748. We are not asking that you identify your client, but only that you bring to our attention what appear to be abusive promotions with characteristics similar in nature to those indicated. We believe that you will agree that vigorous enforcement action in this area is in the best interests of your clients who, with the vast majority of American citizens, pay their taxes honestly.

Thank you very much for any consideration you can give to this request, and we hope the information provided will be helpful to you and your clients. □

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Correcting the Correctional System

The media are full of it.

Read your newspapers. Listen to the news.

Not a day goes by without a story about the rottenness of Washington's correctional system. Walla Walla, Monroe, Shelton, the King County and Snohomish County Jails—these are detention facilities which have become notorious. They have been the scenes of prison riots, suicides, knifings, beatings, strikes and rebellions. The incidents which occur within the walls of Washington's detention and correctional facilities are an embarrassment to a state which prides itself on its progressiveness.

They are an embarrassment to the bar, too. As the stewards of our judicial system, lawyers have an obligation to recognize breakdowns in the system when they occur. And the correctional institutions ARE as much a part of the legal system as the trial procedures which help determine who belongs in them. The correctional institutions are as equal a part of the legal system as the civil law, the tax code, and the rules of evidence.

The trouble is, not all lawyers see the problem as their concern. Some lawyers prefer not to see the problem at all. If you are one of those lawyers who simply do not care, this issue of the *Bar News* is for you.

Why should you care what happens in Walla Walla or the King County Jail?

There are different answers for different lawyers. If you are an empathic person, you care about what is happening in the institutions because you know that you yourself could not survive in that environment. If the stories emanating from the prisons make you squeamish, you probably need little encouragement to invest some thought in the problem. Read the theme articles without delay.

Suppose you do not care whether prisoners lead a tough life behind bars or not. You might think that the ones we lock up deserve exactly what they get, if not worse. Yet you might have some sympathy for the guards, medics and administrative personnel who have to work in those same institutions. They deserve a working environment free from overcrowding and the dangers posed by a thousand bored, tense men. They deserve safe and sane correctional facilities even if the prisoners do not.

Suppose all this talk about other people's problems really doesn't bother you: what then? Then you should still heed the rumblings coming from the institutions. It is, after all, in your own self-interest to seek improvements in the system. It is your tax dollars which run Walla Walla; your money which pays for a system that confines people in enclosures more crowded than the animals in any zoo; your money which supports a system that essentially makes bad people worse, and then releases them back into society.

Which brings us to the ultimate self-interest in seeking changes in the correctional institutions: the majority of criminal offenders who are incarcerated are eventually released. They're coming back to your towns and your streets. The savage life style which a prisoner necessarily learned in order to survive in an overcrowded, dehumanized prison world is the life style he will help perpetuate in society. Perhaps neither the corrections personnel nor the prisoners deserve anything better, but certainly you do!

If neither appeals to sympathy nor self-interest move you, however, you should know that the bar's Code of Professional Responsibility exhorts you to be concerned about the situation in the jails and prisons. Ethical Consideration 8-1, though only "aspirational in character", reads, in part:

> By reason of education and experience, lawyers are especially qualified to recognize deficiencies in the legal system and to initiate corrective measures therein. Thus they should participate in proposing and supporting legislation and programs to improve the system, without regard to the general interests or desires of clients or any former clients.

And Ethical Consideration 8-9 reads:

> The advancement of our legal system is of vital importance in maintaining the rule of law and in facilitating orderly changes; therefore, lawyers should encourage, and should aid in making, needed changes and improvements.

Assuming we have made the jump from apathy to lukewarm interest, the question then becomes: What on earth can we possibly do about the jails and prisons?

Judicial sentencing is the key, say some. But if sentencing is, in fact, crucial to alleviating overcrowding in the institutions, we must first decide what it is that sentencing is supposed to accomplish. Rehabilitation? If so, Walla Walla in its present state is not the place for it. Punishment? Certainly. But should we really confine the three-time check forger with the triple murderer? Chances are that what we eventually release upon ourselves will be a murderer who has learned how to pass bad checks. Community safety? Of course, but does the present system really make society safer in the long run? Chief Justice Warren Burger said in his February 3, 1980, State of the Judiciary Address: "To put people behind walls and bars and do little or nothing to change them is to win a battle but lose a war. It is wrong. It is expensive. It is stupid."

On the other hand, we can simply build more prisons, hire more guards, restore dilapidated facilities. We can wage wars on poverty and unemployment, providing you can still find the soldiers. We can de-

criminalize, recriminalize, moralize, penalize and lobotomize . . . but these are palliatives which will only postpone the day when we will have to decide what we really want to do with these people.

Of course, the purpose of this editorial is to pique your interest, not to solve problems. Solutions we leave to our authors and readers. I endorse only one proposition. Whatever your views on the jails and prisons, you should know that the present system is ailing. And whether out of pique, pity, empathy, self-interest, or a sense of professional duty, you should make it your affair to participate in the cure.

Editor, WSBN

The President's Corner

Washington State Legislature—1981

(You're free to read the intervening paragraphs, or you may skip to the last paragraph of this article for the principal message I'm trying to convey.)

Opinions differ on the wisdom of Governor Ray's decision not to call a 2nd Extraordinary Legislative Session during 1980. From the standpoint of the Bar Association, that decision went in at least two directions: We avoided one more defensive session against anti-lawyer bills; on the other hand it deferred any positive legislative effort into a regular session which may be so concerned with budget matters as to have little time for non-money matters.

One matter particularly deserving of our concern is the attrition of lawyers from the legislature. In the current session, the only lawyer members are the following: Senators Ted Bottiger, George Clarke, Jeanette Hayner, Dick Hemstad and Phil Talmadge, and Representatives Skeeter Ellis and Mike Padden. While these legislators have no pre-commitment to the Bar's legislative program, we can count on their understanding the issues and analyzing the merits of bills affecting the courts, the practice of law or substantive legislation. As you can see, there are even too few of the lawyer legislators, particularly in the House, fully to staff the two judiciary committees. They have difficult and responsible commitments and deserve our thanks. Also they deserve to have more lawyer legislators serving with them and we are pleased at the efforts (albeit unsuccessful) of some 18 other lawyers who filed for the legislature.

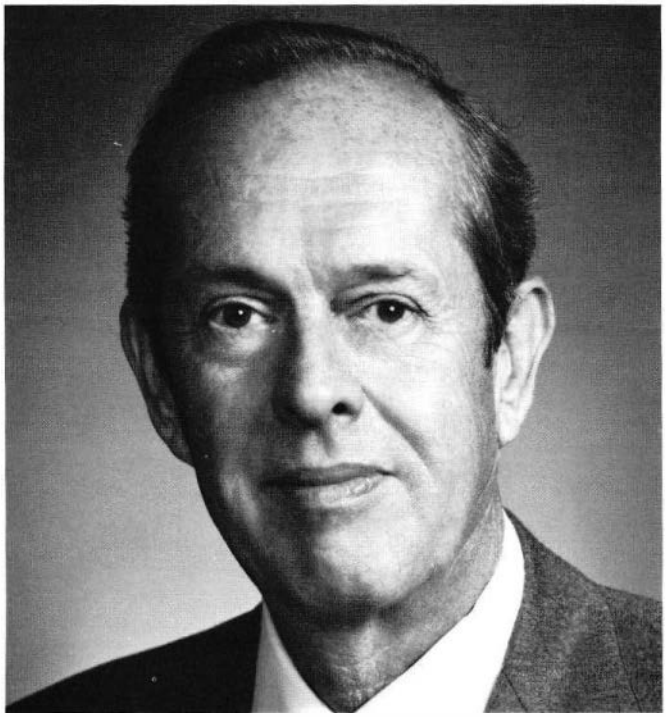
We should also feel special appreciation for our two legislative representatives, Bill Gissberg and John Fattorini. We're fortunate to have knowledgeable, straightforward and respected representatives. Their effectiveness far outreaches the funds that either the Association or the political action committee has been able to provide. They work closely with our Board of Governors and with our Legislative Committee headed by Bill Baker of Everett.

The detailed aspects of prospective bills are beyond the scope of this article. After a report by the Legislative Committee to the Board, a specific priority of "sponsor", "support" or "not opposed" will be determined (possibly also some threatened items will be labeled as "no position" or "opposed"). Anticipated items for consideration are these:

Products Liability (or "Tort Reform") preserving joint and several liability and providing for contribution among joint tort feasors.

Budget with principal emphasis by the Association on support for the judiciary budget.

Court Congestion and Delay. Senator Talmadge will present an omnibus bill on the subject and the Bar committee headed by Lee Campbell may have additional specific items.



Corporation Code revisions and *Limited Partnership Act* revisions developed by the Corporation, Business and Banking Section of the Association.

1972 amendments to Article 9 of the UCC, now adopted by a majority of states.

Administrative Law provisions as to independence of hearing examiners or administrative law judges.

Judicial Discipline with implementing legislation for the constitutional amendment.

Attorney General investigatory and discovery powers.

Trade Secrets Act, a modification of a proposed uniform state law, sponsored by the Association's section on Intellectual and Industrial Property.

A final thought: We urge each of you who has a useful basis of contact with one or more legislators at the "grass roots" level to advise Bill Gissberg or John Fattorini (address: 1001 South Eastside, Suite A, Olympia 98501, telephone: 206-943-9977). Contact by constituents can helpfully supplement the constant efforts of our legislative representatives. More than any other group of citizens, lawyers should be directly concerned with our legislature and its actions. Our legislative representatives can use your individual help.

Bradley F. Jones

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A Sentencing Judge Looks at Incarceration

by **Walter J. Deierlein**

Defining and executing the criminal justice system involves an exercise in tripartite responsibility. The legislature defines crimes and indicates the seriousness by prescribing the penalties to be imposed. The judiciary processes criminal cases, and levies sentences within the parameters set by the legislature. It is the function of the executive to carry out the sentences imposed by the judiciary. The performance of each reflects upon the others. Each branch must discharge its responsibility.

We now have the spectacle of a corrections and penal system in chaos resulting from years of studied neglect and understanding. This condition is made to appear to be the result of a sudden, unexpected surge in jail and prison population. This is hardly the case. In fact, every indicator has forecast the present condition over a considerable period of time. Increased population, more serious and aggravated crime, increase in actual crime rate, more effective law enforcement have been predicted for years. Yet the question is asked: what should be done about Washington's institutions and the county jails throughout the state? As trial attorneys so frequently tell judges: To state the Question is to make obvious the Answer.

Correction facilities and administration must be modernized, improved and enlarged. The state executive should make the plans for the improvement program and the legislature should fund them.

Regrettably, the issue is not being addressed in a forthright way. Emergency type relief measures are being offered as cures. It is suggested that local resources should be used as alternatives to incarceration. This is exactly what sentencing judges have been doing to such an extent that a backlash is now occurring. The movement toward presumptive sentencing is overwhelming.

It is suggested that a less expensive form of penalty is supervision on the local level. This plan was attempted in the forms of Intensive Probation and Intensive Parole. Neither of these programs have been shown effective, and enthusiasm for them has vanished.

It has been suggested that the sentencing be taken from the discretion of judges and circumscribed by guidelines designed to keep individuals out of overcrowded institutions. This is either a blatant attempt to decriminalize certain classes of crime, a step which the legislature does not care to take outright, or an indication that the State is not willing to properly care for and protect individuals in institutions, and asks the County to do it. If the penalty for a first offender on burglary in the second degree is to be fixed at 50 hours of community service and repayment of the damage done and articles taken, the legislature should be the branch to set it. The public should not be left with the impression that this is the judge's decision.

Judge Deierlein, presently President-Judge of the Association of Superior Court Judges, has been on the Skagit County Superior Court bench for 14 years. A graduate of the University of Washington School of Law, he served two terms as Prosecuting Attorney in Skagit County and was President of the Washington Association of Prosecuting Attorneys in 1960-1961.

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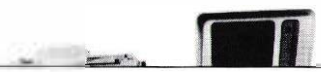

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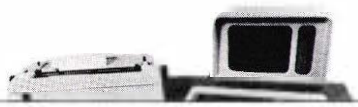

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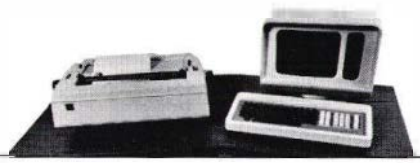

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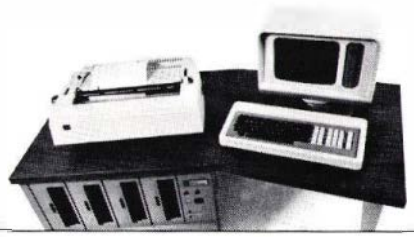

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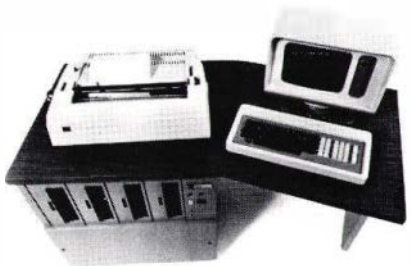

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Nor should the length of a sentence, or the commitment to jail be determined by the space that is available at any given time. This is not a factor in determining if an individual deserves to be incarcerated or how long he should remain.

The real tragedy in attempting to deal with our problem as it exists here by expedient emergency measures is that these programs are heralded far and wide as a new reform or a progressive attitude in dealing with crime and punishment, without facing up to the root problem. Citizens are made to feel that the problem is solved and that there is no further need for enlarging our number and variety of correction facilities, or improving those we have. And the incarcerated people remain bitter and frustrated, knowing that nothing has changed.

I believe it is a principle followed by all judges in sentencing to select the least restrictive form of punishment and the most corrective program commensurate with the individual, his record, the crime and the public interest, with uniformity and fairness a controlling influence. To sentence another human being to prison, or a jail term, is the most distasteful, disagreeable duty a judge performs. We know what it means to the defendant and his family. We know what it does to him. We know the things that happen there. But when alternatives fail, we are required to perform fully our part of the tripartite responsibility.

The judge is solely responsible for the sentence he pronounces — no other person. He feels very keenly this responsibility to the public, to the victim and to the defendant.

The victim may demand retribution; the prosecutor may insist upon full punishment; the defense attorney may plead for just one more chance; but it is the judge's name that goes on the Judgement and Sentence.

Is it too much to insist that these individuals sentenced to a correction facility or jail be placed in the hands of competent, well trained staff? Is is too much to expect that they be protected from one another, and even themselves? Is it too much to expect that the facility be large enough to properly accommodate the increasing numbers? □

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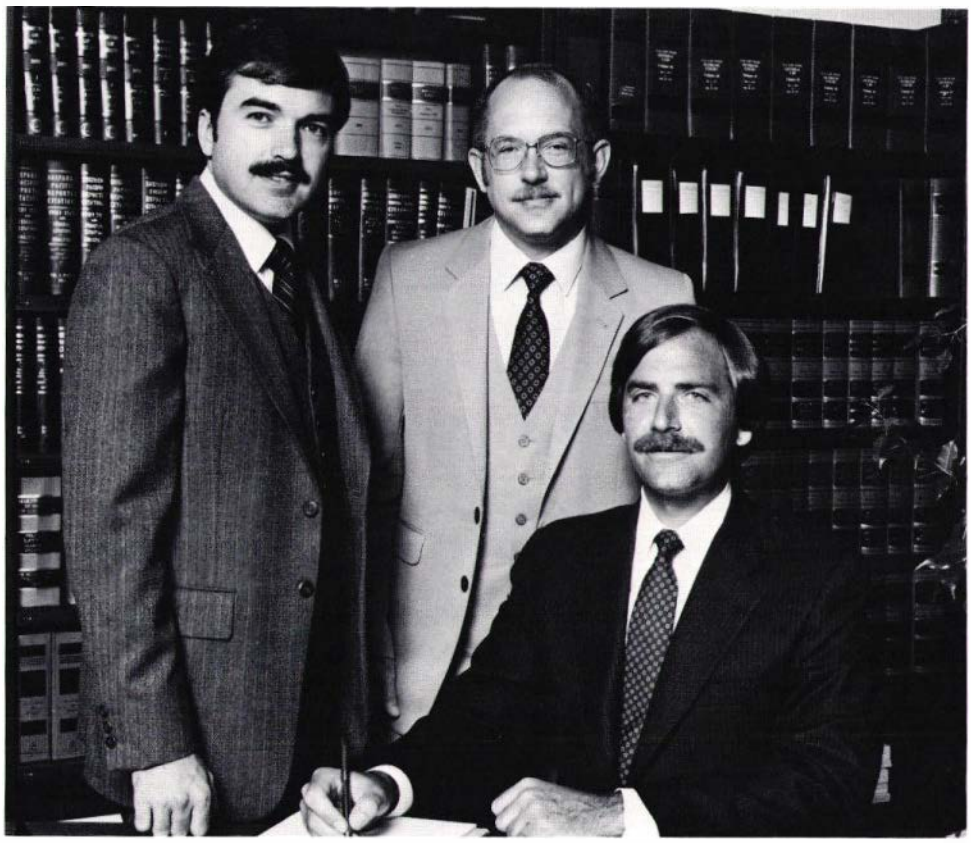

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The Failure of Overincarceration and the Need for an Alternative Approach in Corrections

by Steven Scott

On June 23, 1980, U.S. District Court Judge Jack E. Tanner concluded in a 60-page opinion that the conditions and treatment in the Washington State Penitentiary at Walla Walla constituted cruel and unusual punishment. *Hoptowit v. Ray*, E.D. Wash. No. 79-359. I write now from the perspective of an attorney involved not just in the *Hoptowit* case but in the representation of this state's prisoners over the last six years.

Hoptowit v. Ray is not unique. A similar case, *Collins v. McNutt*, W.D. Wash. No. C-79-79V, is now pending, challenging conditions in the Washington State Reformatory at Monroe, and a number of counties, including King, Snohomish, Yakima and Walla Walla, have been sued over conditions in their jails. Nor does Washington's experience differ — except perhaps in degree — from that of other states. Over the last decade, suits against prison and jail officials have been filed across the country. Many courts have entered judgments in favor of prisoner-plaintiffs.

My purpose here is not to defend litigation and judicial intervention in the prison context. I only offer my personal observation that for years prior to the *Hoptowit* decision Washington's prisoner population grew steadily and conditions at both Walla Walla and Monroe continued to deteriorate badly despite constant reassurances from state officials that improvements were imminent. The important task now, however, is to address the problems which recent litigation, at the very least, has underscored.

At the root of our problems, unquestionably, is a severely overcrowded correctional system. The United States, according to the American Institute of Criminal Justice, has one of the highest *per capita* incarceration rates in the world, more than twice that of Canada, three times that of Great Britain and four times that of West Germany. Available data shows only the USSR and South Africa with higher rates. Washington, according to a study by the American Foundation, has one of the highest incarceration rates in the United States, ranking first in the incarceration of blacks and tenth in the incarceration of whites. In addition, prisoners here serve comparatively lengthy sentences. It is not surprising, then, that our system is severly overcrowded.

Even at its rated capacity, an institution like the Washington State Penitentiary starts with a number of serious handicaps. Apart from the size of the population, it is a deteriorating, fortress-like prison, geographically isolated from our major urban areas. The wide range of community resources which could be utilized in the Seattle area, for example, to provide medical and mental health services or vocational and educational opportunities does not exist in Walla Walla. The recruitment of qualified correctional staff is particularly difficult. Relations between a largely minority, urban prisoner population and a predominantly white, rural staff are understandably strained. Most prisoners are cut off from any meaningful contact with family, friends and the community to which they will someday return.

Overcrowding compounds the problems already inherent in an institution like Walla Walla. It further overtaxes inadequate services and programs. It increases idleness. It aggrevates existing tensions. It makes adequate classification impossible. Consequently, less serious offenders cannot be separated from more serious offenders. Prisoners in need of only medium or minimum custody are commony housed in maximum custody. Ac-

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Steven Scott is presently the director of the Institutional Legal Services Project. He received his B.A. from Stanford University in 1970 and his J.D. from the University of Pennsylvania in 1974.

cording to state officials at the time of trial in *Hoptowit*, over one-third of Washington's prisoners were confined in facilities more secure than was either necessary or desirable. Overcrowding, in short, produces boredom, fear, anger, violence and, ultimately, bitterness and frustration.

Many blame overcrowding on the public's "Lock them up and throw away the key" attitude. Such an attitude, if it exists, probably reflects the public's desire to pursue at least two traditionally recognized purposes of corrections: first, to punish criminal behavior; and, second, to protect the public against such behavior in the future. It may also reflect a desire to avoid dealing with the problem.

It is clear that shipping a criminal offender off to Walla Walla is punishment—cruel and unusual punishment in violation of the Eighth Amendment. It is also clear, however, that this kind of punishment neither protects the public nor allows a community to avoid dealing with the problem. Gerald Thompson, Secretary of the Department of Social Health Services under Governor Ray, pointed out in a recent speech to the Washington Council on Crime and Delinquency that 95 percent of those sent to prison eventually return to their local communities. "We put more people in prison," Secretary Thompson said, "for longer periods of time than any other civilized nation, and it gets us a steady stream of tough, ornery, cynical, somewhat desperate individuals who are constantly being cycled through the system and back out into our communities."

Our strong inclination to lock up more and more people for longer and longer periods of time, first, has resulted in the widespread violation of constitutional and human rights inside our prisons, and second, has failed to protect our communities against criminal behavior. A new approach to corrections is essential. Our communities, if they are to be safe, cannot continue to ship offenders off to Walla Walla and forget about them until one day they return. Chances for the successful reintegration of an offender into the community—which must be our goal once it is recognized that 95 percent of those sent to Walla Walla eventually return—are greater by far when the offender remains in the community. This approach, if it is to be pursued consistent with short term public safety, requires, of course, the development of an entire range of adequately funded community programs and facilities at all security levels. It requires much greater utilization, also, of the extensive resources available in our communities for educational and vocational training, employment, counselling and other necessary services.

In addition to offering a more sensible approach to protection of the public from criminal behavior, punishment and rehabilitation of offenders within the commu-

nity is much less expensive than incarceration in large, geographically isolated prisons. The state now seeks, for example, almost $30 million, or $60,000 per prisoner, to build a new 500 bed prison. The cost, after construction, of incarcerating one person in such a prison for one year was estimated three years ago at between $10,000 and $26,000. Criminal Justice Research Center, *Sourcebook of Criminal Justice Statistics —1978*, U.S. Dept. of Justice, Law Enforcement Assistance Administration. In contrast, in 1978 the annual average cost of maximum supervision of a first year probationer was around $550. Donald Thalheimer, *Cost Analysis of Correctional Standards: Community Supervision, Probation, Restitution and Community Service*, Volume 1, National Institute of Law Enforcement, U.S. Dept. of Justice 1978. In order to be truly effective, the concept of corrections within the community must be drastically expanded from what exists presently; however, there is certainly plenty of room to expand the current $550/offender and still remain far below the millions of dollars it would cost us to build and operate a new Walla Walla.

Finally, there are some who suggest that we should focus primarily on sentencing reform as a cure for our correctional ills. It is true that from the perspective of both the plaintiffs and the defendants in *Hoptowit v. Ray*, the Board of Prison Terms and Parole has been entirely unresponsive to the crisis we now face. The problem, however, in my opinion is not with the theoretical basis of indeterminate sentencing (our present system) but, rather, with the absence of any statutory control over the exercise of discretion by the Parole Board. The Board, for example, should be subject to the Administrative Procedures Act. It should be required to submit for legislative approval a set of guidelines under which it would decide individual cases. Both in promulgating its guidelines and in reaching decisions in individual cases, it should be statutorily required to take into account such factors as system-wide institutional population, the ability of the Division of Adult Corrections to comply with minimum professional standards for humane confinement, and a preference wherever possible for community alternatives to incarceration in a state institution.

Any sentencing system may prove unresponsive and unjust if it is not securely tied to the objectives on our criminal justice system. Determinate and presumptive models recently adopted in other states, for example, have tended to lengthen sentences and exacerbate problems of prison overcrowding. Legislative efforts should be focused not so much on a change in the sentencing model to be used as on a shift from over-incarceration to stronger community involvement in corrections. Only then are sentences likely to be humane, just and effective. □

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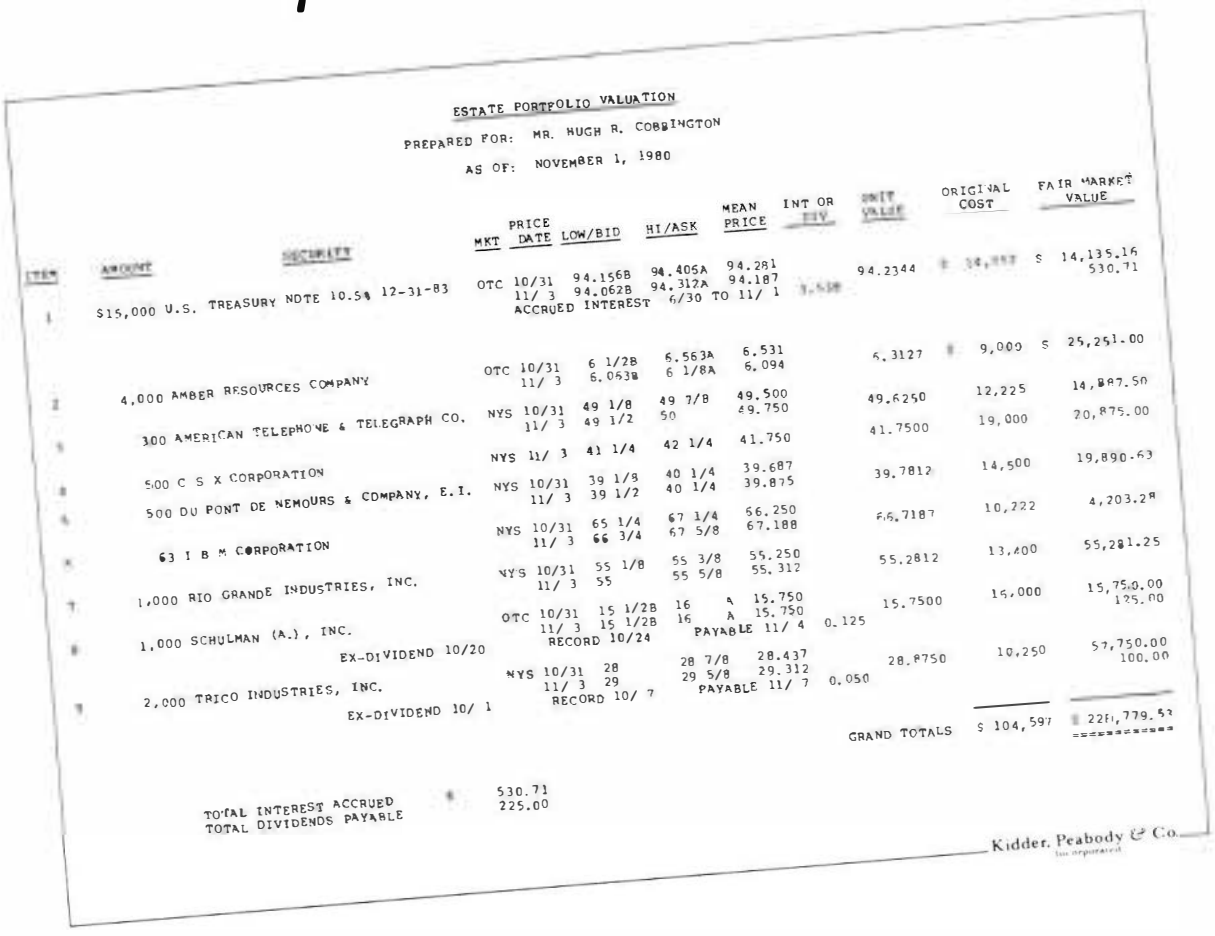

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PREPARED FOR: MR. HUGH R. COBBINGTON

AS OF: NOVEMBER 1, 1980

ITEM	AMOUNT	SECURITY	MKT	PRICE DATE	LOW/BID	HI/ASK	MEAN PRICE	INT OR DIV	UNIT VALUE	ORIGINAL COST	FAIR MARKET VALUE
1	$15,000	U.S. TREASURY NOTE 10.5% 12-31-83	OTC	10/31	94.156B	94.405A	94.281		94.2344	$ 14,997	$ 14,135.16
				11/ 3	94.062B	94.312A	94.187				530.71
				ACCRUED INTEREST		6/30 TO 11/ 1		3.530			
2	4,000	AMBER RESOURCES COMPANY	OTC	10/31	6 1/2B	6.563A	6.531		6.3127	$ 9,000	$ 25,251.00
				11/ 3	6.063B	6 1/8A	6.094				
3	300	AMERICAN TELEPHONE & TELEGRAPH CO.	NYS	10/31	49 1/8	49 7/8	49.500		49.6250	12,225	14,887.50
				11/ 3	49 1/2	50	49.750				
4	500	C S X CORPORATION	NYS	11/ 3	41 1/4	42 1/4	41.750		41.7500	19,000	20,875.00
5	500	DU PONT DE NEMOURS & COMPANY, E.I.	NYS	10/31	39 1/8	40 1/4	39.687		39.7812	14,500	19,890.63
				11/ 3	39 1/2	40 1/4	39.875				
6	63	I B M CORPORATION	NYS	10/31	65 1/4	67 1/4	66.250		66.7187	10,222	4,203.28
				11/ 3	66 3/4	67 5/8	67.188				
7	1,000	RIO GRANDE INDUSTRIES, INC.	NYS	10/31	55 1/8	55 3/8	55.250		55.2812	13,400	55,281.25
				11/ 3	55	55 5/8	55.312				
8	1,000	SCHULMAN (A.), INC.	OTC	10/31	15 1/2B	16 A	15.750		15.7500	15,000	15,750.00
				11/ 3	15 1/2B	16 A	15.750	0.125			125.00
		EX-DIVIDEND 10/20		RECORD 10/24		PAYABLE 11/ 4					
9	2,000	TRICO INDUSTRIES, INC.	NYS	10/31	28	28 7/8	28.437		28.8750	10,250	57,750.00
				11/ 3	29	29 5/8	29.312	0.050			100.00
		EX-DIVIDEND 10/ 1		RECORD 10/ 7		PAYABLE 11/ 7					
									GRAND TOTALS	$ 104,597	$ 221,779.53

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Justice in Sentencing

It is argued below that we will never get a handle on sentencing and corrections until we first decide who should go to prison, for how long, and what we are willing to pay for. The following statement was adopted by the Washington Association of Prosecuting Attorneys on 5 December 1980.

Submitted on behalf of the W.A.P.A. by Norm Maleng, King County Prosecuting Attorney.

Over the past five years the failings of our current sentencing system have become increasingly evident: wide disparity in the sentences received by similar offenders; the lack of any requirement that key decision makers explain their discretionary decisions; the lack of predictability of sentences on either the individual or mass level; the impossibility of managing such an unpredictable system; the dishonesty inherent in appearing to impose relatively long sentences while actually effecting quite different ones.

It is proposed that our current indeterminate sentencing system be replaced by a "presumptive-determinate sentencing" system. This proposal is designed to (1) require every felony offender to receive *some* punishment, though punishment need not be equated with incarceration in every case, (2) make that punishment proportionate to the offender's crime and criminal history, (3) impose a system of determinate sentences that will sharply limit the parole system, (4) effect more consistency in punishments through the creation of standard sentences, (5) allow sentencing judges to make discretionary exceptions to the standards, upon explanation and judicial review of such exceptional sentences, (6) enable better planning and control of prison and jail capacity problems, and (7) require restitution to be paid to victims of crime and to the community.

As a *caveat*, we note that our society has an obligation to provide adequate, safe and humane prison capacity. In the absence of adequate capacity no sentencing system will work.

The Current System

Under our current "indeterminate" sentencing system, judges and the parole board are granted broad discretionary authority to fashion each offender's sentence. A judge has two basic choices: either place the defendant on probation or send him to prison. But each choice allows for many possibilities.

Probation. Approximately 75% of all felony defendants statewide receive probation. Their terms of probation typically last from two to five years, or longer. The conditions of probation may (but need not) include requirements such as getting and keeping a job, undergoing counseling, paying restitution, and refraining from criminal activity. Probation may (but need not) also include up to one year in jail, including work release. Violation of the conditions of probation may (but need not) result in further jail time *or* a sentence to prison.

Prison. If an offender is sent to prison (whether immediately after sentencing or after violating probation), the judge must sentence for the "maximum" allowable term—either five, ten, or twenty years, or longer, in some cases—depending on the felony committed. However, the "maximum" has little real meaning. Soon after the offender gets to prison, the Board of Prison Terms and Parole—an independent body of nine members appointed by the Governor—sets a "minimum" term. For example, a judge would send a burglar to prison for the maximum "10 years." But the parole board might then set the "minimum" at 3 years. This minimum, however,

really operates as a maximum. The prisoner can get (and normally does get) 1/3 off for "good-time," i.e., the "three-year" term becomes a "two-year" term. Moreover, pursuant to "guidelines for reconsideration of length of confinement," further cuts off the minimum time are made. These guidelines predict a prisoner's probable success on parole based on individual social and behavioral factors. For example, if a male property offender lived with a wife or parent just prior to admission to prison he will receive a percentage "discount" off his minimum term; if lived alone he will not. (A female property offender receives no discount for this factor.) Thus the ten-year term, reduced to a three-year term, reduced to a two-year term, now becomes a "real" 18-month term.

When a prisoner is released he or she is placed on "parole." Parole is a program by which a prisoner is released before his or her maximum term is up. The parolee must comply with conditions such as reporting to a probation officer, ongoing counseling, refraining from criminal activity. Violation of parole can result in further conditions being imposed *or* a return to prison for up to the remainder of the maximum term.

As an alternative to the "minimum-term setting" scheme above, the parole board may disregard its guidelines (they are voluntary) and place a new prisoner almost immediately on "intensive supervision." The prisoner is simply released on parole but subjected to closer supervision by a parole officer than if the prisoner had served a normal prison term. The number of convicts placed on intensive supervision appears to be growing—perhaps in response to the crowded conditions of the prisons.

Failings of the Current System

The criticisms of this system are many. It is challenged on several grounds.

Equity. Our laws are unjust because defendants who have committed the same crime with similar criminal records can receive widely varying sentences. We can't defend a system when a person's sentence depends on the luck of the draw of a sentencing judge.

Honesty. Our laws are dishonest because there is little relationship between the sentence imposed by a judge and the time actually served by a defendant. We can't defend a system as honest where we read in a newspaper that a person is sentenced to 10 years in prison, but never hear that he is released on intensive parole a few weeks after he arrives in Shelton.

Effectiveness. There is little evidence that the individualized indeterminate sentencing model works, and much evidence that it does not. Judges and the parole board try to guess who will be a good or bad risk on probation or parole. They try to fashion a good "program" for the rehabilitation of the offender. This is not

only a difficult task but frequently strays too far from the more fundamental question of what crime was committed and what is a *fair* punishment.

Accountability. We can't defend a system in which critical sentencing decisions are within the virtually unlimited discretion of judges and the parole board, especially when: that discretion is subject to minimal review; and the decision makers need not justify their actions.

Manageability. We can't manage our corrections system because what happens at one stage of the system can always be undercut by the next stage. The prosecutor and police may work hard to investigate and try a case, only to be undercut by a system which turns the defendant back on the street. If a judge does send the defendant to prison, the parole board can undercut that decision with intensive parole or early release. Prison administrators are caught in the middle—they control neither entrance or exit. They cannot plan effectively for the number of people who will be in their prisons.

Proposal

A presumptive sentencing bill will address these problems by setting up standards for the imposition and completion of terms of punishment for felony offenders.

Standard Terms. If such a bill were passed there would be narrow ranges of punishment for each felony offender, which would increase in severity and length with the seriousness of a defendant's current and past crimes. The number of ranges would be reasonably limited. The ranges of punishment would address both the length and general security level of the sentence served. For example, these ranges might include terms of community supervision, partial confinement, or total confinement. Community supervision would entail paying restitution to the victim of one's crime, or paying a fine, or performing community service such as working in a park or hospital. (Violation of these obligations could result in jail time.) "Partial confinement" would require an offender to spend part of the day in jail or halfway house and the rest of the day at liberty or on a job or at school. (Violation would result in jail time.) A term of "total confinement" would require an offender to spend his term in jail or in prison on a 24 hour-a-day basis. Thus, the punishment for every offense calls for *some* degree of restriction of one's liberty.

Board of Criminal Sanctions; Prison and Jail Capacity. The actual ranges would not be in the bill itself. Rather a Board of Criminal Sanctions—a group of citizens, judges, prosecutors, police, and defense attorneys—would be directed to develop, over a one-year period, a proposed set of ranges. It would be the function of the Board to propose standard sentences

Continued on page 31.

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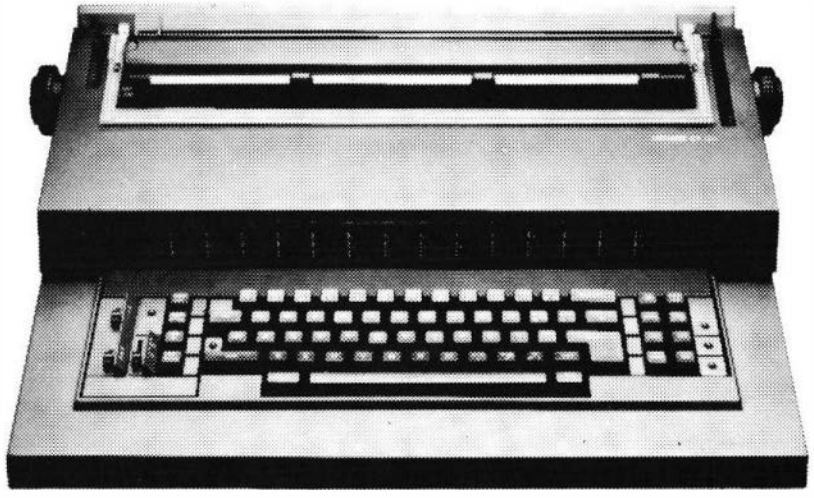

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The Board's Work

by **Steven A. Reisler**

"HARD WORK" PRESCRIBED AS CURE FOR COURT CONGESTION

OLYMPIA, January 9-10 -- Judge William Brown of the Pierce County Superior Court addressed the Board of Governors on the subject of court congestion and suggested this solution: every judge should work harder.

Judge Brown, who has served on the bench for more than thirteen years, recently concluded a personal study of judicial workloads around the state. After completing his study, Judge Brown determined that "the only place that has the problem (of court congestion) is King County." Judge Brown suggested that simple hard work would effectively alleviate the congestion problem in King County, too.

Premising his conclusions on experience in the Pierce County court system, Judge Brown found that the number of cases filed each year is not related to the number of cases which a judge actually tries. In Pierce County, each judge maintains his or her own trial calendar. Because of this, Judge Brown's study showed that the average civil case in Pierce County comes to trial in six to eight months. The study also showed that in some counties (such as Thurston County) most civil cases are ready for trial in less than six months.

Although Board members were generally skeptical, Judge Brown argued that a 1:28,300 judge-to-population ratio would permit civil cases in any county to be heard in eight months or less, provided that the judges worked hard enough. The 1:28,300 ratio is the result of dividing the total number of Pierce County judges and commissioners into the total Pierce County population.

Despite his recommendation that trial judges work harder, Judge Brown told the Board that judicial vacations do not have a significant impact on current court congestion problems. He noted that trying cases one after another can cause a judge to burn out, if he were not allowed a liberal vacation period. As in any business, there are judges who do not do their fair share, but they are a minority. Rather than curtailing vacation time, Judge Brown suggested that court congestion would be effectively controlled if judges from the less populous counties regularly loaned their services to more case-burdened counties.

At the conclusion of Judge Brown's presentation, Lee Campbell spotlighted recent activities of the Bar Association's Court Congestion Committee. Campbell reported that significant progress has been made in formulating abbreviated criminal appellate procedures. No action has been taken to date, however, to similarly abbreviate civil appellate procedures.

BOARD DELIBERATES LEGISLATION AWARDING FEES TO PREVAILING PARTY

In a report by the WSBA Legislative Committee, the Board learned that that committee recommended Bar opposition to proposed legislation which would award reasonable attorney fees to the prevailing party in a lawsuit. The legislation, in its present form, reportedly is also opposed by the Washington State Trial Lawyers Association. The impetus behind the bill is the desire to reduce congestion in the courts by penalizing frivolous litigants. Board members, however, were not convinced that the bill would achieve the desired result. It was noted that, first, the courts are not presently clogged with many 'junk' cases, and, second, that the proposed legislation might discourage middle and lower income plaintiffs from seeking legal redress for legitimate problems.

The Board ultimately voted to oppose this bill in particular, and generally to oppose the concept of awarding attorney fees to the prevailing party - at least until after the Board's special task force on this question has presented its findings. The Board also voted to oppose legislation which would permit awards of punitive and exemplary damages. The Board's opposition stems from fears expressed by the Legislative Committee that the statutory language awarding punitive and exemplary damages in cases of "oppression, fraud, or malice, express or implied," is too ambiguous.

STATE INHERITANCE TAX REVISIONS APPROVED -- WHEN FEASIBLE

Legislation is pending which would eventually abolish the State Inheritance Tax and substitute a "pick-up tax" to replace the present tax system. John R. Price and Robert S. Muckelstone, representing the WSBA's Real Property, Probate and Trust Section, described the statutory changes which, in their estimation, would considerably uncomplicate an exasperatingly complicated area of the law.

Some Board members were concerned, however, that it was unrealistic and impractical to support legislation which would deprive the state coffers of millions of dollars of revenue. The Board of Governors would not enhance its credibility, one member reflected, if at the same time it proposed salary increases for the judiciary and opposed imposing a sales tax on lawyers' services, the Board also supported tax reform legislation which would further erode the state's financial base.

The Board was not swayed by the counterargument that revenue loss caused by changes in the inheritance tax would be compensated by consumer savings in lower accounting fees. Adopting a compromise position, the Board finally voted to approve the principle of substituting a pick-up tax for the present state inheritance tax, but left it to the legislature to decide when such substitution would be economically feasible.

BOARD DELIMITS IMMUNITY FOR JUDICIAL QUALIFICATIONS COMMISSION

A task force created by the Judicial Council has proposed implementing legislation for the Judicial Qualifications Commission approved by voters in the November 1980 elections. The proposed legislation would establish terms of office for the Commission, reimbursement schedules for expenses, and describe the powers necessary for the conduct of general inquiries. The Board approved the proposed legislation in its entirety with the exception of Section 8 dealing with immunity. Board members also expressed reservations about the wisdom of giving the

Commission an absolute privilege in actions for defamation resulting from information provided to the Commission.

By majority vote, the Board supported civil or criminal immunity for Commission members involved in disciplinary proceedings, without the provision that they act in good faith. It disapproved the concept of an absolute privilege for charges made before the Commission. It was the sentiment of the Board that New York Times Co. v. Sullivan, 376 U.S. 254 (1964), should, instead, control the issue of privileged information.

BOARD SUPPORTS INCREASING SMALL CLAIMS COURT JURISDICTION TO $1,000

In light of the rate of inflation and the increasing litigiousness of society, the Board voted to support legislation increasing the jurisdiction of Small Claims Court to $1,000. Under the proposed bill, an individual plaintiff could avail himself of Small Claims Court only once per month per department. The Board, however, did not take a position on the one-use per month restriction.

The Board condoned the expansion of Small Claims Court jurisdiction despite expressions of concern that the expansion might jeopardize the incomes of some young lawyers. Another articulated fear was that the proposed legislation might encourage abuse of the system by collection agencies. Seattle attorney Wendy Gelbart stated her view, however, that nobody gets rich on thousand dollar cases. Moreover, she argued that laypersons should have the right to settle their problems in a court of law regardless how inexpertly they may handle their cases or how trivial the dollar amounts at stake.

PRESIDENT JONES ADDRESSES THURSTON-MASON LAWYERS

Members of the Board of Governors met informally with representatives of the Thurston-Mason County and the Governmental Lawyers Bar Associations. State Bar President Brad Jones spoke to the assembled lawyers about legal matters which soon will concern everyone in the profession.

The issue of specialization came up first. At this time, approximately ten states have some form of specialization certification. The issue in Washington might eventually boil down to a confrontation between older, experienced lawyers versus younger lawyers, and small town lawyers versus big city lawyers.

Speaking on the subject of advertising, Jones offered his view that the lawyer advertising he has seen so far has been neither excessive nor offensive. The Bar will nevertheless continue to closely scrutinize all forms of advertising. Some lawyers have recently begun to question the cost-effectiveness of lawyer advertising in the mass media.

Jones also promoted the idea of lengthened judicial terms. In view of the oversight function of the recently instituted Judicial Qualifications Commission, Jones suggested that it is now unreasonable to continue Washington's exceptional practice of short judicial terms. Because of the existence of the new Commission, the short terms, which subject judges to the frequent stress and expense of campaigning, could be lengthened without diminishing judicial responsiveness to the public.

OTHER BOARD ACTIONS:

- PROFESSIONAL SERVICE CORPORATIONS - The Board rejected a motion to support modification of RCW 11.36.010 to permit personal service corporations to act as personal representatives. As one Board member explained: "If a judge appoints a lawyer to be a personal representative, THAT person should be responsible to the judge and party, not everyone else in the P.S.C."

- JUDICIAL SALARIES - By unanimous decision, the Board voted to support salary increases for Washington's Superior, Appellate and Supreme Court Judges.

- ESCROW AGENTS - The Board voted to support the Escrow Agent Registration Bill except as it applies to attorneys who are not engaged in commercial escrow business.

- ADMINISTRATIVE LAW JUDGES - The Board recommended passage of the Administrative Law Judges Act as approved by the WSBA Legislative Committee. In its approved form, rate hearings by the Utilities and Transportation Commission are specifically excluded from the ALJ bill.

- PREJUDGMENT INTEREST - The Washington Judicial Council has proposed legislation which would provide for the imposition of prejudgment interest on certain claims. Although the Council maintains that prejudgment interest would help ease court congestion, the Board declined to take a position on the legislation as it is presently worded.

- COURT RULES - The nearly defunct WSBA Court Rules and Procedures Committee has been resurrected. The Committee, which prior to December 4, 1980, had not met for three years, was urged to actively participate in the formulation of court rules and to periodically review procedures promulgated by other agencies. A Board member remarked that the reactivated committee will have plenty to do because every advance sheet includes some new or proposed rule changes.

- TAX SCAM PAMPHLET - A special tax publication prepared by the Tax Section will be published as a supplement to the Washington State Bar News. The Board voted to split the estimated $3,500 publishing cost with the Tax Section and to provide for an additional run of magazines for supplementary distribution. □

Continued from page 25.

which effect the best balance between fair sentences and institutional capacity. The Board would be required to demonstrate the impact of its proposed sentencing standards on institutional capacity and cost. If the Board proposed sentences which would exceed actual institutional capacity, the Board would also be required to suggest alternative standards which would have less impact. The Board's proposals and alternative suggestions would be made to the legislature, which could approve or modify them. Thus, the legislature would make the final decision on the standards and their impact. The ranges could be modified every two years by the legislature. In this way the legislature could maintain the difficult but essential balance between the sentences desired by the citizens and their ability to *pay* for those sentences with tax dollars for prison beds and other corrections programs.

If the effect of the standards would increase local costs, the state should pay these costs.

Determinate Sentences. The sentencing judge would be required to sentence an offender within the range appropriate for the offender's offense and prior record. The sentence itself would be a definite term—"determinate"—so that the offender, the victim, the community and state would all know the actual extent of the offender's obligation to pay for his or her crime. The sentence imposed would be the sentence actually served. Restitution to the victim would be ordered whenever feasible: an offender's willful refusal to pay could result in further jail time.

Exceptions. The standard ranges would apply in the large majority of cases. However, it is recognized that overly rigid "mandatory" sentencing provisions are often evaded in the extremely aggravated or sympathetic case through the exercise of discretion by some other agent in the system (police, prosecutor, juries, governor). For this reason, in addition to the discretion offered a judge to sentence *within* the standard range, the judge could, in exceptional cases, sentence *outside* the standard range. But in such cases the judge must make written findings why a sentence within the range would be unjust. Further, a sentence outside the standard range would be subject to appeal by either the defendant or the prosecutor. Appeal would be to a regional sentencing review panel of other superior court judges, and/or to the Court of Appeals. Gradually, a "common law" of sentencing would develop to define the truly exceptional case.

Modifications of the Above Model. The plan outlined above is a rather pure "presumptive-determinate" sentencing model. Three modifications of this model are likely to be considered: "good or earned" time, probation, and parole. *We express considerable skepticism over the need for these features.* However, we are firmly

convinced that *if enacted, they must be subject to clear limits*.

(a) "Good or earned time." Some incentives for good behavior in prison may be necessary. However, reductions in the length of one's sentence to be granted for good or productive behavior should be subject to an understandable limit. For example, the law might provide that no combination of earned, good, or other "time" off shall exceed 20% of the original sentence imposed. (Without some such limit: the sentence becomes too uncertain; too much emphasis is placed on behavior in prison instead of the crime that caused the prison sentence; there is too much possibility of manipulation by prisoners and the prison system; sentences are less predictable and therefore less manageable; and there will be a dangerous tendency to impose unrealistically long sentences because of the knowledge that they may be undercut by some form of early release.)

(b) "Probation." At the community supervision/jail level more flexibility may be in order. For example, the standards might provide that any jail term less than six months long could be "suspended" subject to up to a one year probationary term. Violation of the conditions of probation or community supervision could result in imposition of the unserved jail time. While admittedly contrary to the "pure" model of presumptive determinate sentencing, this local probation option would be acceptable because: the disparity allowed has a limit (up to six months); the impact is local only; it recognizes that where there is no statewide impact (i.e., prison terms) it may be more appropriate to impose more local standards; the crimes involved would be less serious, i.e., not deserving of more than a six month jail term.

(c) "Parole." Some period of supervision during the transition from prison to community life is desirable. It is therefore appropriate that the law provide for such a period of "parole" during which the parolee must abide by conditions or be returned to confinement. This period might be the remainder of a person's "good-time" or "earned time" or might be a statutorily prescribed percentage of the prison sentence. In any event, it should be limited and should *not* be a means for either releasing prisoners early *or* returning them to prison for longer periods of time. (Serious, new law violations would, as a rule, be prosecuted in court as new crimes, with the resulting sentence increased because of the offender's prior record.)

We repeat that it is important to set clear and tight limits on the use of probation, good-time, and parole. Without such limits, the "modifications" threaten to swallow proposed reform and maintain the very conditions which cause us all so much concern. □

ABA Standards for Criminal Justice

by **Kenneth P. Short**

Washington State Delegate to the ABA

In a recent, special ceremony, the American Bar Association, represented by Ken Short, State Delegate from Washington, presented the new four-volume second edition of the ABA Standards for Criminal Justice to former Chief Justice Robert F. Utter. This brief article provides an historical analysis of this remarkable legal achievement and describes the content and format of the revised Standards.

In 1968 the American Bar Association began publication of its 18-volume Standards Relating to the Administration of Criminal Justice. That effort began in 1963. In August, 1980 a completely updated and revised second edition of these comprehensive Standards was published by Little, Brown and Company. This second edition therefore represents the culmination of an 18-year American Bar Association effort designed to improve materially every facet of the administration of criminal justice. This new four-volume second edition, entitled American Bar Association for Criminal Justice, will assist lawyers, public defenders, prosecutors, judges, police, correctional officials, law professors, legal researchers and a wide variety of criminal justice planners and administrators in the performance of their professional obligations.

The Chief Justice of the United States Supreme Court has described the ABA's criminal justice standards project as "the single most comprehensive and probably the most monumental undertaking ever attempted by the American legal profession." The effort was indeed both comprehensive and monumental: it utilized the professional skills and experience of hundreds of the nation's leading jurists, lawyers, legal scholars and practitioners from every part of the country and from every facet of the criminal justice field.

After the full 18-volume first edition of the standards had been printed and widely distributed, the practical value of these comprehensive criminal justice guidelines became apparent. Since their first printing, beginning in 1968, the standards have been cited more than 8,400 times. Almost one full decade after the original publication date, the ABA undertook the second major step in its long-range criminal justice standards developmental plan. That step involved a complete and comprehensive standards updating project. That project was completed in early 1980 and a full revised standards manuscript was delivered to the publisher. While the August, 1980 publication of the revised second edition represents a culmination of the ABA's standards endeavor, it does not represent an end to that endeavor. To ensure that its comprehensive Standards for Criminal Justice will remain as permanent guidelines for the nation's criminal bar and for the nation's criminal justice institutions, the ABA created a permanent Standing Committee on Association Standards for Criminal Justice. That Committee has been charged with the permanent responsibility of seeing to it that the standards are monitored effectively; that they reflect the current state of the law; that the Association pursue effective implementation programs; and, that new standards as required be proposed by the Committee for the Association's consideration.

Thus, the second edition of these standards represents a true beginning for a planned and orderly continuing improvement in the administration of criminal justice. To that extent the publication of the second edition represents an end to ad hoc criminal justice reform. The

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second edition provides comprehensive guidelines in the form of 424 black letter standards, each of which represents a separate approved policy of the American Bar Association. Together these policy positions constitute the distillation of the legal profession's best judgment, experience and practice in every criminal justice discipline. In last analysis the standards represent the bar's determination to guard zealously the rights of those accused of crime while ensuring the ability of criminal justice institutions to preserve what our Constitution refers to as the "domestic tranquility." The standards are evolutionary rather than revolutionary and, in the main, they can be implemented by all existing criminal justice agencies and institutions.

The second edition of the American Bar Association Standards for Criminal Justice contains separate chapters on: Urban Police Function, Electronic Surveillance, Prosecution Function, Defense Function, Providing Defense Services, Special Functions of the Trial Judge, Fair Trial and Free Press, Pretrial Release, Discovery and Procedure Before Trial, Speedy Trial, Joinder and Severance, Pleas of Guilty, Trial by Jury, Sentencing Alternatives and Procedures, Appellate Review of Sentences, Criminal Appeals, and Postconviction Remedies. Each of these chapters has been revised and updated as part of the Association's four-year updating project. The need for that project became apparent in the mid-1970's as a result of sweeping criminal law changes which were part and parcel of the so-called "criminal law revolution." At its Annual Meeting in 1980 the Association expanded the Standing Committee's responsibilities and assigned that committee the duty of implementing the ABA's criminal justice standards. While a wide variety of standards implementation efforts had taken place in the past, the expanded scope of the Standing Committee's responsibilities will enable it to address implementation functions as a key part of its ongoing agenda.

Indeed, the Association's major challenge in the years ahead will be to develop effective implementation strategies to encourage and to assist state and local bar associations and all criminal justice jurisdictions in implementing the standards as enunciated in the second edition. The Standing Committee on Association Standards for Criminal Justice is now engaged in a planning effort to develop a multi-faceted implementation program. That program will attempt to publicize the new standards, to provide formal information about the standards and ways and means for implementing those standards and to deliver technical assistance to state and local bar associations and criminal justice agencies.

The four-volume, hard cover second edition of the ABA Standards for Criminal Justice may be ordered from Little, Brown and Company, 34 Beacon Street, Boston, Massachusetts, 02106. □

Clinical Legal Education

by Jeffrey H. Hartje

The continuing offensive of Chief Justice Warren Burger on the issue of lawyer competence, now focused on trial skills, raises again the simmering controversy between legal "realists" or clinicans and traditional legal educational theory.

The Background

In 1870 at Harvard Law School, Dean Langdell developed the case method of instruction which remains the primary educational methodology in law schools today. The case method, as we know, involves the study of selected appellate court opinions. The mental process involved in this analysis, synthesis and differentiation, developed through the Socratic method in the classroom, provides the students training through a dialogue designed to scrutinize underlying reasoning and legal principle.

The case method has been intensely criticized from the start. But the so-called legal "realists" led by Prof. Karl Llewellyn, Prof. E. M. Morgan, and particularly Judge Jerome Frank, were the first to articulate the shortcomings of the case method. While they saw the value of the case method in developing knowledge of rules and principles and how to distinguish cases through analytic technique, they felt that the narrow preoccupation with appellate opinions ignored an entire world of necessary legal education. Judge Frank was the most scathing in his denunciation of the case pedagogy:

> Students trained under the Langdell system are like future horticulturists confining their studies to cut flowers, like architects who study pictures of buildings and nothing else. They resemble dog breeders who never see anything but stuffed dogs.... Frank, *Why Not a Clinical Law School?* 81 U.Pa. L.Rev. 907,908 (1933).

The case method, it was said: (1) Failed to prepare law students for the practice of law which involves legal skills other than case analysis such as drafting, pleading, fact investigation, planning, trial strategy and advocacy; (2) Failed to examine human relations objectives involved in the legal profession such as those in interviewing, counselling, negotiation, communication and emotional understanding in general; (3) Failed in its narrow approach to emphasize the ethical and social reponsibilities of the profession; (4) Failed to consider entire areas affecting the law: legal institutions, the legal profession; social and economic history of legal rules; legislative and administrative factors; pre-trial and trial level proceedings. The "realistic" remedy was to advocate the establishment of legal clinics in the law schools to deal with these shortcomings. Students in these clinics would experience first hand the workings of law.

Without attempting to oversimplify, it is accurate to say that opposition in the law schools to realistic or clinical law training proved exceedingly strong, perhaps because the large class case-method was cheaper; perhaps because clinical training smacked of trade schoolism.

The present clinical education movement that began in the early 1960's was not a result of a religious conversion of the law schools to the truths of clinical education. A nexus of concern about issues of professional responsibility and rights of the poor brought about a renewed interest in "practical" legal training. Funding, through the Ford Foundation's Council on Legal Education for

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Professional Responsibility established law clinics at several law schools. The "War on Poverty" which sought, in one of its facets, to provide legal services for the poor for civil problems and Supreme Court decisions making provision of counsel mandatory in criminal matters affected those in legal education. Law schools were urged to start new efforts involving clinics where students would provide legal representation for credit under law school faculty supervision. These developments, albeit much admired, seemed to be educationally justified on the very limited bases of "service" and the opportunity for new lawyers to learn the "how to do" aspects of practice.

This emphasis during the formative days of the current clinical movement did not stress the quality of the students' educational exposure. Nor was close faculty involvement and supervision seen as a requisite characteristic of such programs. The value seemed to lie in the very exposure to a chaotic legal process through community service.

Missing in early clinical law efforts was the educational depth of purpose represented by "realist" thinking. To the realist, students needed to be exposed in a structured way to the every day working of the legal system in order to become aware of the impact of the law on their client, their institutions, their society. Clinical training would enhance theoretical understanding and encourage reflection upon student's future roles so they would not view their profession as one of technique and legal mechanics devoid of social reality.

After this interlude of reduced emphasis on educational benefit to students, clinical educators, in approach, have now returned essentially to the objectives of the "realists." The structured clinical program emphasizing close faculty supervision and maximum educational exposure is now the standard for evaluating clinical experience.

Beyond How To Do It

The present public dialogue generated largely by the Chief Justice emphasizes skills-training for lawyers. However, skills-training alone does not define the goals of clinical educators. The teaching of skills properly and inevitably must lead to an exploration of the legal, social, and psychological processes in which skills training is only a facial phenomenom. As one commentator has pointed out:

> No useful line can be drawn, for example, between clinic counseling as a skill (which may suggest mere manipulation) and a deeper understanding of the client as a human being who behaves and will react to the law and official discretion in particular ways because of his background and present situation.

Ferren, *Goals, Models and Prospects for Clinical Legal Education,* Chicago Conference, Report, p. 105.

What are the goals of good clinical education? Clinical teachers believe that the essentially abstract rationalization of concepts in the classroom needs a synthesis into a student's real life context. In addition, a student needs to explore and reflect upon his involvement in this context. Developing this synthesis and awareness is a learning process that may be appropriately guided during the law school experience. Clinical exposure can have a very broad impact on students. The objectives of clinical teaching fall generally into five basic areas:

(1) lawyer skills development;
(2) learning about learning or a methodology of problem solving;
(3) professional responsibility growth;
(4) inquiries into the legal and extra legal system;
(5) public service.

1. *Lawyer Skills Development.* This is an area that needs no lengthy elaboration. The traditional assumption in legal education has been that lawyer skills are innate; born not made. Such skills, it was assumed, were not based on any fundamental principles that could be taught and were best left to trial and error experience. Most lawyers are, thus, not prepared to function as lawyers simply as a result of graduation and passing the bar. To compound matters, experienced practitioners rarely have the time or inclination to effectively train young associates, even if they can articulate what is valuable in what they do and can share this value. Law schools can do better. Experienced clinical faculty can recognize the processes invoked in the development of practical skills and that such processes are subject to analysis, evaluation and discussion.

Interviewing, counseling, negotiating, drafting, research, developing case strategy, trial preparation, and litigation conduct are vital lawyer skills. Dissection of these skills in a small group setting or in a one-to-one setting, followed by the experience of implementing suggestions and alternatives in a real circumstance develops in a student the ability of critical self-awareness. Not only does this process develop more competent lawyers in the short run, it provides an evaluative awareness and a standard by which to measure performance long after graduation.

The Commission established by the U.S. Supreme Court, chaired by Chief Judge Edward Devitt to evaluate lawyer competence in the federal courts reported as one of its findings a direct correlation between clinical law training in the law schools and competence in the courtroom.

The case is made for the value of skills training in clinical education. But, as suggested earlier, clinical educators make claims for the efficacy of clinical training far beyond skills training.

2. *Learning about Learning or a Methodology of Problem Solving.* A lawyer must learn how to make judgments, reasonable decisions, often with little or no guidance from others. Most often, the decision-making judgment process does not submit to a casual time consuming consideration; judgments must be made quickly and decisively. Careful guidance and analysis in a clinical setting can assist immeasurably the student's un-

derstanding of how decisions are made, what information and understanding is necessary on a case by case basis in order to make a responsible decision with a client about case strategy or alternative approaches to a problem decision. This is a vital process. One that involves an inordinate amount of a practicing lawyer's time. In a clinical setting under supervision and with guidance a student can confront and accept, modify, reject, or at least recognize factors that influence and develop the decision-making process. In a real sense, a student is learning about how he learns. This is an initial step in the methodology of problem solving that is an essential factor in a meaningful clinical experience and the practice of law.

3. *Professional Responsibility Growth*. As students are engaged in actual cases, they experience issues of ethical and moral content in a setting where they can develop a basis for clarifying and understanding their own human and ethical standards and those of the profession.

The clinic teacher has the opportunity to engage the student in a colloquy where rote memory of a Canon is never sufficient or dispositive. Often the question is one of human involvement: Where the client's problems are partly nonlegal, how shall I decide whether to assume only the role of an advocate, a technician, or to be involved more broadly as a concerned human being? Can I avoid a dependency relationship with my client that will do him more harm than good? How can I or should I attempt to evaluate whether my approach in a case is more a matter of my need for success than any real concern for my client?

Many times traditional ethical questions are posed in a difficult fashion: How can I determine when I am obliged to advise a client that I will not use a delaying tactic or engage in groundless litigation? And how do I determine when delay becomes dilatory and a claim is fundamentally frivolous? What do I do when the client asks *me* to choose among several alternatives I have just explained, for his choice?

It is submitted that this type of exposure and reflection is important for the development of ethical sensitivity and can inculcate a human responsibility beyond Canon Rules.

4. *Inquiries into the Legal and Extra-legal System*. Students involved in clinical work are participant-observers. Every day they come into contact with attorneys, judges, jails, welfare departments, therapy centers, police departments, motor vehicle and insurance agencies and countless other institutions. Clinical students are prompted to critically and systematically understand the mechanics of operation of these institutions, the discretionary actions involved in institutional decision-making, proper and improper, and the impact these actions have on members of the public, most often their clients.

A future lawyer can develop a sensitivity to malfunctioning and injustice in the institutional machinery in society as reflected in the individual case. It is important for a person training to become a lawyer to develop the capacity that leads him to perceive, from the specific facts of a case involving a client, a general social problem. Why is this important? When the role of lawyers in society is reviewed, it is evident that their training should also include prepraration for intellectual, political, social leadership on behalf of society as a whole. Not as an elitist group. But as individuals that hopefully have encountered social problems in their own experience and have insight to solutions.

The clinical setting is also one that is very conducive to inquiries into our system of justice. Clinical educators and students have already contributed important research in significant areas including: the performance and evaluation of lawyer service from the client's view; the nature and function of litigation; the effect of the adversary system in retarding alternatives in conflict resolution.

5. *Public Service.* The National Legal Services Corporation has estimated that there are close to 6 million legal problems experienced by the poor each year which receive no attention because of the lack of access to legal assistance. A happy by-product of clinical education programs is the improvement of delivery of legal services to the public. Most clinical programs, particularly in their in-house components, provide legal services solely to the indigent. The American Association of Law Schools has estimated that the number of persons receiving legal representation yearly by supervised law students in clinical programs may exceed 400,000 nationwide.

Beyond the public benefit of such programs exists the potential for the individual student to instill a continuing commitment to provide services to the public. The student who has been personally involved in the delivery of services to a poor client will not quickly forget the personal impact of this representation.

This has clearly been a discussion of the goals of clinical legal education without blemishes. There are most assuredly blemishes. Many of them. Loose supervision, heavy caseloads, repetitious cases can be the most common pitfalls in attaining these goals. However, the remarkable development of clinical law in the law schools (there are now over 140 law schools featuring some 494 separate clinical programs in 57 areas of law) may portend important developments in legal education:

> "As the clinical method seeks to encourage students to reflect on their roles as participants in and students of the legal process, the elements of introspection extends to the teaching-learning process as well. In legal education, where the case-socratic method has been so entrenched that questions of pedagogy have received little attention, clinical educators have brought (a)...renewal of interest in basic questions of teaching methodology." Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. Leg. Ed. 162, 193 (1974).

While there remains a somewhat uneasy truce between traditional legal education and clinical education, the glare of the public eye in the realm of lawyer competence may create a dialogue involving the values, premises and direction of legal education itself that may make a profound contribution beyond mere educational methodology. □

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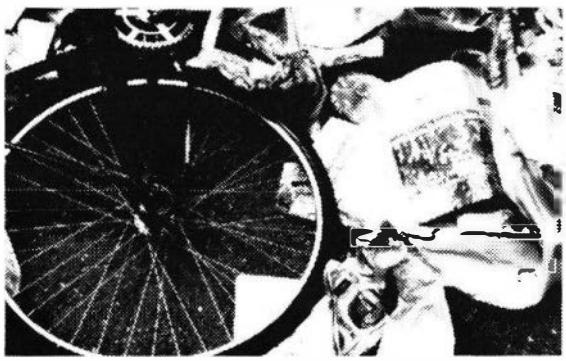

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Dealing with Adverse or Missing Findings of Fact on Appeal

by Douglass A. North

At the heart of an analysis of any appeal from a trial to the court are findings of fact and conclusions of law. Findings are the hard points around which an appellate argument must fit while the conclusions are the vulnerable part of the trial court's decision where the first attack should be made. This article addresses the matter of what to do when appealing from a trial court decision in which a finding adverse to your case has been entered, or in which no finding has been entered on a point critical to your argument on appeal:

A. Facing an Adverse Finding of Fact

1. Procedure

Counsel must be careful to challenge any adverse finding of fact with which there is reasonable grounds to disagree. Those findings which are not challenged on appeal will be treated as verities. *Lakeside Pump v. Austin Construction Company*, 89 Wn.2d 839, 576 P.2d 392 (1978). In order to challenge a finding on appeal, it must be listed in the Assignments of Error or is not effectively challenged. *Kelso v. Consolidated Beverages*, 7 Wn. App. 87, 497 P.2d 1336 (1972). Rule of Appellate Procedure 10.3(g) requires that a separate assignment of error be made for each challenged finding. Rule of Appellate Procedure, 10.4(c) requires that material portions of the text of the challenged finding of fact be typed out verbatim and included in the text or in an appendix to the brief. Failure to challenge a finding in the proper manner on appeal may result in the court's refusal to review counsel's challenge to the finding. *McIntyre v. Plywood Company*, 24 Wn. App. 120, 600 P.2d 619 (1979). Where there is no uncertainty as to which finding is challenged due to its quotation in the argument, however, the appellate court will ignore the technical violation of rule and reach the merits pursuant to rule of appellate procedure 1.2(a). *Daughtry v. Jet Aeration*, 91 Wn.2d 704, 592 P.2d 631 (1979).

Findings which were supported by substantial evidence will not be overturned by the appellate court. *Thorndike v. Hesperian Orchards*, 54 Wn.2d 570, 343 P.2d 183 (1959). As long as there is testimony by a credible witness in the record which supports the finding at issue and is not overwhelmingly opposed by the testimony of other witnesses, the court will find substantial evidence to support the finding. The appellate court will not substitute its judgment for that of the trier of fact upon a disputed issue of fact. *Keogan v. Holy Family Hospital*, 22 Wn. App. 366, 589 P.2d 310 (1979).

The court will, however, overturn a finding where the trial court has rejected uncontroverted credible evidence or capriciously disbelieves uncontroverted evidence, *Smith v. Pacific Pools, Inc.*, 12 Wn. App. 578, 530 P.2d 658 (1975); and will set aside a finding without support in the evidence. *Port v. Utilities and Transportation Commission*, 92 Wn.2d 789, 597 P.2d 383 (1979); *Guard v. Friday Harbor*, 22 Wn. App. 758, 592 P.2d 652 (1979). It is also easier to overturn a finding where the finding in question is not supported by the other findings. *Davis v.*

Douglass A. North is with the Seattle firm of Hennings, Maltman, Weber & Reed. Formerly law clerk to Judge Keith M. Callow of the Washington State Court of Appeals, he now devotes a substantial portion of his time to appellate practice.

Labor & Industries, 22 Wn. App. 487, 589 P.2d 831 (1979).

2. Routes of Attack

Counsel will have better luck in challenging an adverse finding if one of the following strategies can be employed:

a. Quantum of Proof Required. The substantial evidence standard may vary depending upon the quantum of proof required on the point at issue. *In re Sego*, 82 Wn.2d 736, 513 P.2d 831 (1973). *Parker v. Speedy Refinance*, 23 Wn. App. 64, 596 P.2d 1061 (1979). Thus, where a point must be proven by clear, cogent and convincing evidence, more will be required in the way of substantial evidence to meet that standard than where a mere preponderance of the evidence is required. *Adams v. Jensen-Thomas*, 18 Wn. App. 757, 571 P.2d 958 (1977). Correspondingly, the trial court's finding that a party has failed to meet the clear, cogent and convincing standard will not be reversed unless there is no reasonable way for the evidence to substantiate the trial court's findings. *Thompson v. Henderson*, 22 Wn. App. 373, 591 P.2d 784 (1979). There are some recent cases, however, which have questioned whether there is really any difference in the standard involved. *State v. Gross*, 23 Wn. App. 319, 597 P.2d 894 (1979); *Davis v. Pennington*, 24 Wn. App. 802, 604 P.2d 987 (1979).

b. Finding Based on Documentary Evidence. If the entire relevant evidence is in documentary or deposition form, the appellate court may substitute its judgment for that of the trial court as to findings of fact. *In re Estate of Reilly*, 78 Wn.2d 632, 479 P.2d 1 (1970). This follows naturally from the fact that the trial court has not heard live witnesses and thus is in no better position to judge the evidence than the appellate court. Documentary and deposition evidence is particularly likely where review is sought of an administrative decision, *Hospital District v. Safety Employees*, 24 Wn. App. 64, 600 P.2d 589 (1979) or where review is sought of a ruling by a trial court upon a motion. *Faucher v. Burlington Northern*, 24 Wn. App. 711, 603 P.2d 844 (1979).

c. Finding Must Be an Ultimate Finding. The trial court's findings must be findings on the ultimate factual issues involved, not a mere recital of the evidence which the trial court has heard. *In re Woods*, 20 Wn. App. 515, 581 P.2d 587 (1978). The trial court, however, also has an obligation to reveal its theory of decision to the court of appeal through its findings, conclusions and judgment. Therefore, an ultimate finding which gives no explanation for the court's rejection of undisputed credible evidence in opposition to that finding is not sufficient. *Cochran v. Cochran*, 2 Wn. App. 514, 468 P.2d 729 (1970).

d. Changing Findings to Conclusions. Characterization by the trial court of its rulings as findings or conclusions is not hard and fast. If a finding can be re-characterized as a conclusion, it will be much easier to attack. The distinction between ultimate findings of fact and conclusions of law can often be a difficult one. For some recent court guidelines on the subject, see *Moulden & Sons v. Osaka Landscaping*, 21 Wn. App. 194, 584 P.2d 968 (1979). A conclusion erroneously designated as a finding will be treated as a conclusion on appeal. *Union Local 1296 v. Kennewick*, 86 Wn.2d 156, 542 P.2d 1242 (1975); *Dullanty v. Comstock Development Corp.*, 25 Wn. App. 168, 605 P.2d 802 (1980).

B. Lack of a Finding of Fact.

The trial court must make a finding as to each material issue in the case. *Daughtry v. Jet Aeration*, 91 Wn.2d 704, 592 P.2d 631 (1979). Thus, you must have findings on each material issue to support your theory on appeal.

If a finding of fact necessary to your theory of the case on appeal is lacking, there are several ways in which such a finding can be deduced or implied by the appellate court.

1. Implication of Findings.

In the absence of a finding of fact on disputed issue, the appellate court will imply a finding against the party having the burden of proof. *Rodes v. Gould*, 19 Wn. App. 437, 576 P.2d 914 (1978); *Seattle Flight Service v. Auburn*, 24 Wn. App. 749, 604 P.2d 975 (1979). Of course where the evidence is undisputed, the appellate court will imply a finding consistent with the undisputed evidence. *Tacoma Commercial Bank v. Elmore*, 18 Wn. App. 775, 574 P.2d 798 (1977); *Seattle Flight Service v. Auburn, supra*. The court will reason similarly, where the evidence is overwhelming and largely undisputed, *Schoonover v. Carpet World*, 91 Wn.2d 173, 588 P.2d 729 (1977).

2. Use of Court's Oral Opinion.

Where there are no findings on a matter, the court's oral opinion, where consistent with other findings, will be adopted on the issue. *Transamerica Insurance Group v. United Pacific Insurance Company*, 92 Wn.2d 21, 593 P.2d 156 (1979). The court's oral opinion will also be consulted where the findings are ambiguous, vague or incomplete. *Port Townsend Pub. v. Brown*, 18 Wn. App. 80, 567 P.2d 664 (1977). The appellate court must simply be able to discern the underlying theory of the trial court's decision.

It is always difficult handling an appeal when the findings of fact are not as you would wish to have them. But there is a much greater promise of success when counsel is familiar with the ways of getting around adverse findings and implying needed missing findings. □

Law Processing In the 1990s

by Steven A. Reisler

The *Bar News* ran an article about the future of the practice of law in the January 1980 issue. In that article, author John A. Jenkins speculated about expanding legal horizons and the impact of technology on the law. The article touched on the effect which technology, specifically computer technology, will have on the *way* you actually practice law.

Computers will change the practice of law. Computers will cause a revolution in the profession, as far-reaching a revolution as that caused by the introduction of xerography.

Look through this and previous issues of the *Bar News*. What do you see? Computers! Everywhere, advertisements for computers! Many of the advertisements are for small business computers, computerized research tools and word processing systems. And this is only the tip of the iceberg. Word processing is the harbinger of the future. But the future itself is "law processing"! Not this year, not next year, but perhaps in the 1990s.

Law processing will be the melding of the traditional legal profession as we know it with state-of-the-art computer technology. Your law office, for example, will never be the same again.

The library, that massive, space-hungry, dust-collecting repository of *stare decisis* will become obsolete. Some law firms already have the research systems which will replace it. In the 1990s, every law firm's library will consist of a television monitor, a terminal, a printer, and no books at all. The font of legal knowledge will be the central data banks located somewhere in the Midwest, and young associates in every law firm will "crunch" cases by accessing them with computers.

Paper-shuffling in the 1990s will be held to a minimum. Because every law firm in town will be completely computerized, it will be a simple matter to transmit legal correspondence from one office to another. Even the filing of legal documents with the clerk's office will be accomplished via data communications. "Civil discovery" will take on new meaning in the 1990s. Your clients will be as computerized as your law office. The real issue, therefore, will be access to "passwords" so that the opposition's computers can interface with your client's computers by telephone.

The advent of law processing will also leave its indelible mark on the courts. The trial court will match your micro computer system with a micro computer system of its own. You will both have access to the same data

The author composed this article using a 48 K personal computer programmed for word processing.

"library" in the Midwest, and you will both "crunch" the same cases. Of course, the appellate courts will have a larger and faster mini computer, and the State Supreme Court will have a "mainframe" humming in the basement of the Temple of Justice. Court opinions will no longer come out in bound volumes: instead, all the opinions of the bench will appear on a single eight inch floppy diskette which will even include additions to the state digest in "byte-sized" form.

Law processing will put the byte on litigators, too. Simulated three-dimensional high-resolution computer-enhanced recreations of the tort-at-issue will be displayed for the jury on a portable cathode ray tube (known as a C.R.T.; that is, a television monitor). The jurypersons, who will by this time be more comfortable with tubes than people anyhow, will assimilate data more efficiently this way. Law processing will even change the terminology of litigation. Opening statement will become "jury programming" (which is not to be confused with "voir dire", as practiced by some lawyers), and closing argument will become known as "jury interfacing". Instead of "legal incapacity", defense counsel of the 1990s will argue that their clients' logic boards were temporarily locked out by alcoholic power surges.

Grounds for appeal will also be different when law processing arrives. An appeal will lie when the trial court's ruling is unjust, inequitable, unconstitutional, or full of "bugs". The law processor of the 1990s (and we will all be known as law processors by that time) might write in his/her appellate brief that the trial judge's "random access memory" was too random, or that he had had a "glych" in his C.P.U. (i.e., central processing unit).

There will naturally be some disadvantages inherent in law processing in the 1990s. For one thing, law schools will have to be expanded from three years to seven years in order that new law processors can pick up their B.S. degrees in electrical engineering and computer science along the way. For another thing, computerized law processing will make law practice a very, very lonely business. Your computerized lawyer of the 1990s will need no secretary—she will be replaced by an electronic answering device and a 150 character-per-second dot matrix printer. Your computerized law processor will use no paralegals, and because he will have his research terminal, he will never meet anyone in any library anywhere. Depositions will be conducted by computers, trials will be conducted by computers. In short, the camaraderie of the profession will disintegrate.

Nevertheless, all the negative aspects of law processing will be outweighed by a single benefit. Thanks to computerization, the lawyer of the future will be able to bill time by the nanosecond. □

New Section on World Peace Through Law Formed

by **Floyd F. Fulle** *and* **Robert C. Mussehl**

On December 12, 1980, the Board of Governors of the Washington State Bar Association unanimously granted the Petition of one hundred and one Washington lawyers seeking the establishment of a new section on world peace through law.

The goal of the new Section is to encourage lawyers to involve themselves in the current international effort to improve the effectiveness of international law and existing legal institutions. A fundamental purpose of the Section is to help promote the development of world peace with fairness and justice for all human beings throughout the world.

The International Law Committee of our State Bar included world peace through law concerns. However, the Petitioners felt, and Daniel B. Ritter, Chairman of the International Law Committee agreed, that world peace through law concerns could be better expressed as a separate entity of the Bar.

The ad hoc committee supporting the formation of this section has indicated that the section will follow the leadership of the World Peace Through Law Center in Washington, D.C., which is headed by former ABA President, Charles H. Rhyne. The ad hoc committee also contemplates administering the Earl Phillips Scholarship Fund with the aid of the Washington State Bar Foundation, and requesting the Board of Trustees of the Seattle-King County Bar to delegate the responsibilities of administering the Ralph Bunche Award to the new Section. Seminars and CLE programs are also contemplated as activities of the Section.

For further information on the new section, contact either Floyd Fulle (206) 624-0130 or Bob Mussehl (206) 622-7050.

Washington lawyers interested in joining this new section are urged to send the initial section dues of $10.00 to: Washington State Bar Association, Attn: Serni Reeves, 505 Madison Street, Seattle, WA 98104.

ADMINISTRATIVE LAW SECTION

Decisions made by administrative agencies—at both the state and federal level—are playing an ever more critical role in the lives of all Americans and, hence, in the daily practice of nearly every member of the Bar. Moreover, as we are confronted by important debates over deregulation, legislative oversight, the appropriate scope of judicial review of agency decisions, and demands to broaden or restrict the independence and authority of agency fact-finders and rule-makers, we simply cannot afford to stand passively by and wait for the "specialists" to decide.

We are committed as a section to involving as wide a segment of the bar as possible in these issues and to assuring that our diverse interests and expertise will continue to guide developments in this vital area. We also endeavor to provide practical assistance to the bar by keeping you abreast of pertinent current developments and by regularly sharing successful forms, methods and the like. These goals will be pursued through an active legislative committee, a quarterly newsletter, CLE presentations, and continuing association with the law schools.

In short, the Section is not only alive and well, but eagerly proceeding with its plans for active and continuing programs and maximum participation in the Section. The Section welcomes suggestions from all members of the Bar with regard to its projects and activities, and of course encourages you to join. For further information on any aspect, contact Patrick McIntyre, 2018 Smith Tower, Seattle 98104, (206) 464-5933. □

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Office Practice Tips

Master Calendar—
The Ultimate Reminder

by **Harry E. Hennessey**

Some time ago, the managing partner of the litigation department of one of the larger Seattle law firms expressed his frustration at the fact that some of their lawyers had missed dates for depositions and he had no way of checking in advance. This problem was discussed at the December 10th meeting of the Committee on Office Practice of the State Bar Association. Several of us have solved the problem by utilizing a master calendar. Ours is three feet high and two feet wide and is posted next to the copying machine. It has a separate box for every day of the year and we secure it from a business in Illinois that puts it out for advertising purposes. Chris J. Bell of Port Orchard has one that he gets from California. He was appointed Chairman of a sub-committee to design a master calendar for the use of the Bar Association members. We hope to sell them for $1.00 each. If an office has a policy of entering deadlines for all lawyers, then the entire staff will be checking on one another by glancing at the master calendar when they go to the copying machine.

The Chairman of the Committee, Robert A. Milne of Ephrata and Steve Reisler, the new Editor of the *Bar News* have agreed that we will resume publication of the column, "Office Practice Tips" on a "space available" basis.

James M. Stewart of Montesano was delegated the responsibility to write an article on the safeguard system of bookkeeping and their experience with it for publication in the "Office Practice Tips" column.

Dale E. Sherrow of Seattle, was appointed a committee of one to investigate indexing and making available, past and future articles from "Office Practice Tips" to furnish members upon request. He also has a responsibility of setting up a form file in the Bar Office where forms described in the Office Practice Tips column may be secured by lawyers requesting them.

Stanley Bruhn of Mt. Vernon was appointed a committee of one to furnish an article for publication in the "Office Practice Tips" column on their utilization of a tickler system.

Robert C. Keating of Seattle was appointed Chairman of a sub-committee to reserve a large booth in the display area for the State Bar Convention in Vancouver this year to be manned for three days by two members of the committee. It will feature slides on various items of office practice and forms developed and available for practicing lawyers. The Safeguard people will be urged to put their bookkeeping display alongside our booth. Two experienced office practitioners will be available to counsel any lawyers wishing information on any aspect of office practice. If they are not familiar with the matter, or do not have an answer, it will be taken to the whole committee who will be meeting at the convention and a report will be made to the person making the inquiry. It is the feeling of the committee that this service will be much more valuable than a seminar on office practice and that if the practice is established we will be able to update information every year. We call it office practice counseling. The Florida Bar Association calls it economic advisory service. By any name, we hope it will be of great value to the starting lawyer and to all members of the Bar.

Prepared by the Office Practice Committee, Harry E. Hennessey, Articles Coordinator, Spokane, Washington.

This column is a clearing house for better ways to run the law office. Contributions are solicited from all members of the Bar. □

Approved Continuing Legal Education Activities

COURSES APPROVED

GONZAGA UNIVERSITY SCHOOL OF LAW

Symposium on Law & Ethics
Feb. 21, 1981: Spokane ... 7.00

Conference on Law & the Aging
March 5, 1981: Spokane ... 6.00

NEW YORK LAW JOURNAL

Consumer Finance/Bankruptcy
Feb. 26, 1981: Los Angeles ... 12.00

Corporate & Director Liabilities
March 16-17, 1981: San Fran ... 12.00

PRACTISING LAW INSTITUTE

Foreign Tax Planning
Feb. 23-24, 1981: San Fran ... 12.00

Consumer Credit 1981
Feb. 26-27, 1981: San Fran ... 12.00

Letters of Credit
March 12-13, 1981: Los Ang ... 9.50

Advanced Will Drafting
March 23-24, 1981: Seattle ... 12.00

UNIVERSITY OF WASHINGTON SCHOOL OF LAW

Pacific Coast Labor Law Conference
April 9-10, 1981: Seattle ... 12.50

WASHINGTON STATE BAR ASSOCIATION

Partnership Agreements
Feb. 6, 1981: Seattle ... 5.00
Feb. 13, 1981: Spokane ... 5.00
Feb. 20, 1981: Richland ... 5.00
Feb. 27, 1981: Olympia ... 5.00

Northwest Regional Securities Institute
Feb. 13-14, 1981: Seattle ... 11.50

SEATTLE-KING REPORT

By JAMES L. VARNELL

Credits. This correspondent would like to thank **John N. Rupp, Bruce Pym, David Koopmans** and **E. W. Rexford Lawrence** for contributing recently the hypothetical situations regarding King County Superior Court judges. There was serious debate as to whether such "anecdotes" should be published because of any possible repercussions, but the foregoing practioners prevailed and the response (at least by attorneys and judges not named in the article) was favorable.

Recent Judicial Appointments. **Fred Dore** and **Carolyn Dimmick** will be joining the Washington Supreme Court in January; **T. Patrick Corbett** has been appointed to the Washington Court of Appeals in Seattle, and **Frank Sullivan** and **Terry Carroll** have been appointed to the King County Superior Court bench. Other recent appointments as King County Superior Court judges include **James D. McCutcheon, Jr., Jim Bates, Garry Little, George Mattson, Charles Johnson** and **Roselle Pekelis.**

New Associations. **W. Ronald Groshong, Donald E. Lehet** and **A. Stephen Anderson** will now comprise the partnership formerly known as McCutcheon & Groshong. **Shane C. Carew** and **Christopher Marsh** have become associated with Moriarty, Mikkelborg, Broz, Wells & Fryer. **C. Steven Fury** has become an associate with Levinson, Friedman, Vhugen, Duggan, Bland & Horowitz. **James L. Vonasch** (often confused in court with this correspondent) has moved his office to the Maynard Building. **Robert O. Conoley** (best known for making a "cameo" appearance at trial which lasts two weeks) has joined Reaugh & Prescott. **Jeffrey C. Grant, James D. Nelson** and **Francis S. Floyd** have become associates of Betts, Patterson & Mines. **Kenneth C. Burton** has joined his father, **Philip L. Burton,** in the firm of Burton, Crane & Bell. Foster, Pepper & Rivera has relocated to 1111 Third Avenue Building. **Richard I. Sindell, Barbara Jo Levy** and **Barbara Frost** have associated under the name of Sindell, Levy & Frost, Inc. at the Howard Building. **John Rothschild** has opened a law office in the Smith Tower and is sharing office space with **Larry Baker** and **Walter Palmer. James F. Whitehead, III** has become a member of Le Gros, Buchanan, Paul & Madden. **Edwin G. (Ted) Woodward** has become an associate with McGary, Cole, Bakun & Coolidge. **Joseph C. McKinnon** has become of counsel to Jones, Grey & Bayley, P.S. and **Deborah A. Elvins, James A. Miller, Douglas L. Batey, Mark D. Bradner** and **Lenell Nussbaum** have become associates. Cohen, Andrews & Keegan, P.S. has relocated to 1111 Third Avenue Building.

James L. Varnell has become a partner in Ziontz, Pirtle, Morriset, Ernstoff & Chestnut. By coincidence, **Alvin J. Ziontz** will be taking a one-year sabbatical from the firm and will be a visiting professor of law at the University of Iowa Law School. **Mickey Gendler** has opened his office in the Colman Building. **Robert A. Keolker** has relocated to the Fourth & Blanchard Building and is associated with **Robert W. Swerk. David A. Leen** and **Bradford G. Moore** are practicing at the Westland Building under the name of Leen & Moore, Inc., P.S. Hayne & Moote now has its Seattle office at Two Market Place. **David Waldschmidt** has become employed as corporate counsel for Pacific Northern Oil.

John R. Blackburn has moved his law office to 1306 North 175th, Suite 115, Seattle. **Charles V. Moren, Roger E. Lageschulte, Kenneth L. Cornell, Stephen W. Hansen** and **Lyle K. Wilson** are practicing at 11320 Roosevelt Way N.E., Seattle, under the name Moren, Lageschulte & Cornell, P.S.

Briefly Noted

Trust Accounts and Interest Bearing Checking Accounts

Beginning January 1, 1981, banks will be offering the service of an interest bearing checking account. Attorneys are reminded that funds placed in trust are not their funds and if trust funds earn interest the clients who own the funds are entitled to that interest.

It is not proper for an attorney to use the interest paid on any trust account to pay bank service charges.

Any further inquiries regarding the proper handling of trust funds which bear interest should be directed to either the Washington State Bar Association Legal Department, and/or the Code of Professional Responsibility Committee.

Notice to Attorneys

The King County Superior Court Clerk has instituted the following policy.

Effective, December 15, 1980, payment of collection fees shall be handled in the following manner for all insurance drafts and other receipts requiring collection procedures.

I. When a debtor submits an insurance draft to the Superior Court Clerk's Office in payment of a court ordered judgment or other disposition, it shall be his/her responsibility to pay any collection fee imposed by the banks.

II. The Clerk's Office shall not disburse collection fee encumbered funds until the fee is paid or in the alternative until a court order is filed which assigns responsibility for collection fee payment.

III. Should the creditor, to whom funds are to be ultimately disbursed, wish to pay the collection fee to expedite disbursement and distribution, his/her remittance will be accepted.

Washington State Register

The Washington State Register begins its fourth year of publication in January of 1981. The Register is distributed on the first and third Wednesdays of each month by the state Code Reviser's Office, which also publishes the official Revised Code of Washington and the Washington Administrative Code.

The Register contains the complete text of: rules of state agencies, whether proposed, emergency, or permanently adopted; executive orders of the governor; notices of public meetings of state agencies; rules of the state Supreme Court; summaries of Attorney General Opinions.

The Register also functions as an update service to the Washington Administrative Code through a cumulative table of WAC sections affected since the last WAC reprint or supplement, and is as indispensable a companion for the WAC as the Session Laws are for the RCW.

The annual subscription price of the Register is $50, payable in advance. Address inquiries and orders to: Subscription Clerk, Code Reviser's Office, Legislative Bldg MS/AS-15, Olympia, WA 98504.

Free Kit Describes Government and Private Information Resources for Lawyers

An "information kit" describing how lawyers, legal researchers, and professors and students of law can obtain legislative and statistical publications from a wide range of American sources is available free from Congressional Information Service, Inc. (CIS).

The kit describes the uses and availability of CIS's information management systems, including the *CIS/Index*, which provides up-to-date coverage of congressional publications and legislation; the *American Statistics Index*, a master guide to federal statistical data; and the *Statistical Reference Index*, which covers facts and figures published by more than 1000 private and state sources.

To obtain a free copy of the information kit, write: CIS Legal Information Kit, 4520 East-West Highway, Suite 800, Washington, D.C. 20014. Telephone: (301) 654-1550.

Board Elections Due

Lawyers residing in the Third and Sixth Congressional Districts and in King County, please note:

Members of the Board of Governors of the State Bar to represent those districts are due to be elected this year. Expiring in September are the three-year Board terms of Edward G. Holm, Third District, Quinby R. Bingham, Sixth District and, William Wesselhoeft, King County at Large representative.

The State Bar Association By-Laws (Article II) provide that any active member in good standing may be nominated for the office of Governor from the district in which the member resides upon petition signed by at least twenty but not more than thirty active members also residing in the district.

Nominating petitions may be obtained from the Bar Office, 505 Madison Street, Seattle, WA 98104.

The petition must be filed in the Bar Office by 5 p.m., May 31, 1981.

Photo credit: John McLauchlan

Judge Carolyn R. Dimmick, left, and Judge Fred H. Dore, right, were recently elected to fill two positions on the Washington State Supreme Court.

International Technology Transfer

The International Law section of the Seattle-King County Bar Association and the Intellectual and Industrial Property section of the Washington State Bar Association will jointly conduct a seminar on April 10, 1981, dealing with all phases of International Technology Transfer. Faculty and registration information is currently being distributed.

Oregon Legal Assistants Association Seminar

The OLAA has scheduled its Second Annual CLE Seminar for March 13, 1981 at the Portland Center Red Lion Inn. The seminar will offer three speakers on topics of general interest in addition to four concurrent workshops. The Washington State Bar has awarded 5 hours of CLE credit for attendance at the entire program.

Please contact Ms. Pamela Pendley at (503) 224-3380 for reservation information.

Discipline

K.R. St. Clair Receives Two Reprimands

Mount Vernon Attorney K.R. St. Clair received two Reprimands. These Reprimands were delivered by the Board of Governors at its December, 1980, meeting.

St. Clair received the first Reprimand for negligent failure to promptly pay funds due a client in violation of DR 9-102(B) (4).

St. Clair received the second Reprimand for negligent failure to maintain adequate trust account books and records in violation of DR 9-102(B) (3).

All sums owing were fully paid and no loss was suffered from the negligence.

This notice is published pursuant to DRA 11.7(c) (3).

Donald P. Kirkpatrick Reprimanded

Bellingham attorney Donald P. Kirkpatrick has been reprimanded for violation of DR1-102(A) (6), which prohibits conduct that adversely reflects on one's fitness to practice law, and for a violation of his oath of attorney. The reprimand was issued to Mr. Kirkpatrick at the Board of Governor's meeting on September 5, 1980.

The reprimand was based on Mr. Kirkpatrick's conviction on one count of failure to file a federal income tax return.

In Memoriam

Charles E. Knowlton, Jr., 60, of Seattle, died December 31. He was admitted to the Bar in 1944.

Floyd J. Underwood, 74, of Spokane, died October 26. He was admitted to the Bar in 1930.

The University of Washington School of Law
and the
Washington Law School Foundation
present

SELLER FINANCING OF REAL ESTATE SALES: TAX AND WASHINGTON LAW IMPLICATIONS

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THURSDAY, FEBRUARY 26, 1981—YAKIMA, HOLIDAY INN
FRIDAY, FEBRUARY 27, 1981—PASCO, RED LION MOTOR INN
SATURDAY, FEBRUARY 28, 1981—SPOKANE, DAVENPORT HOTEL
SATURDAY, APRIL 4, 1981—TACOMA, SHERWOOD INN

REGISTRATION FEE: for any program: $100 includes lunch and materials ($90 if postmarked 30 days before program date)

For further information: Ann Magee, 336 Condon Hall, JB-20 University of Washington School of Law, Seattle, WA 98105 (206) 543-0059.

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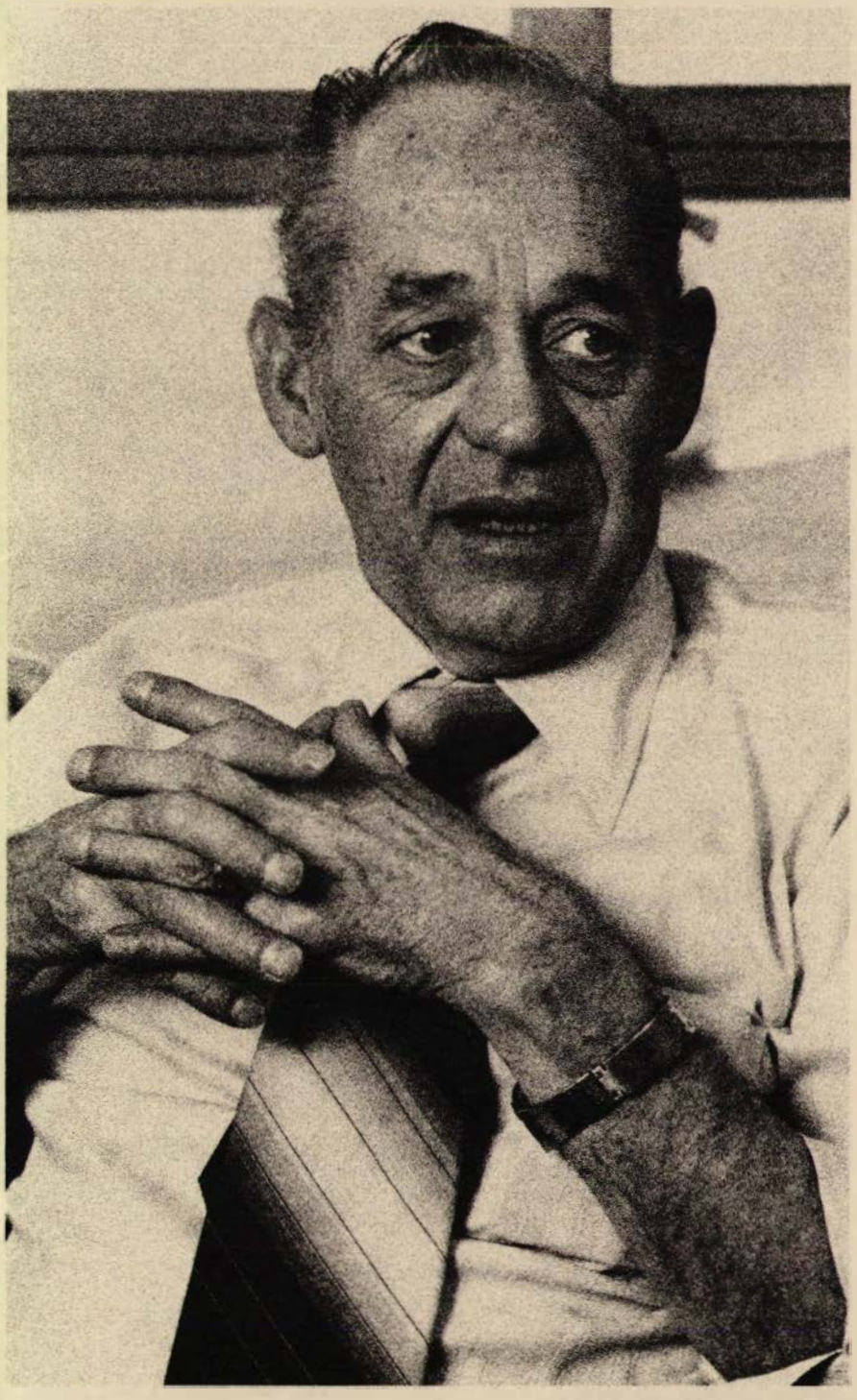

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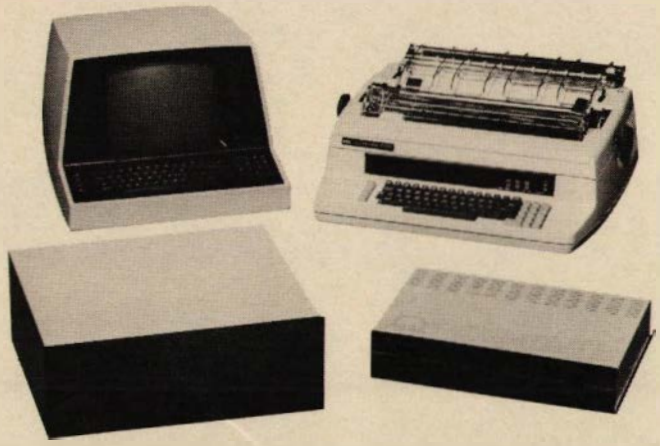

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