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## Bar Briefs; Errata

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# STATE BAR JOURNAL

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## BAR BRIEFS

The new officers of the Tacoma Bar Association are: Charles D. Hunter, Jr., President; DeWitt C. Rowland, Vice-President; Ralph Rogers, Secretary-Treasurer; L. D. Boyle, Oliver Malm, Leo A. McGavick, Burns Poe and A. L. Lee, Trustees.

Twenty-five members of the Tacoma Bar are now in the armed forces. Among those who have seen action in the Southwest Pacific are Lieutenants Lee Rickabaugh and Creighton C. Flynn, U.S.N.R., and Captain Anthony M. Ursich, U.S.M.C.

A memorial ceremony was held on January 22 in the Pierce County Superior Court for the following deceased members of the Tacoma Bar: E. F. Adams, G. B. Aldrich, Frank D. Davis, John A. Gallagher, R. H. Lund, Thomas F. Raye and Ralph Woods.

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The new officers of the Grays Harbor County Bar Association are John D. Ehrhart, President, and Warner Poyhonen, Secretary-Treasurer.

John L. Miller is now practicing law in Elma. Since the deaths of E. S. Avey and Frank L. Groundwater, he is the only attorney in Elma.

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Hon. Hobart S. Dawson of Bellingham has obtained a leave of absence from the bench and is now a major in the military government service of the army. In his absence, Hon. Ralph O. Olson is now the only superior court judge for Whatcom and San Juan counties.

Joseph T. Pemberton is the new city attorney of Bellingham.

Tim Healy, formerly of Bellingham, and David J. Williams announce the formation of the partnership of Williams & Healy, Central Building, Seattle.

Another recently commissioned military government major is Carl Quackenbush, prosecuting attorney of Spokane County. In his absence Leslie Carroll is acting as prosecutor.

We have been supplied with some statistics relative to the shrinkage of the Spokane Bar, which figures may well be typical of other communities. Of 213 lawyers practicing in Spokane on December 7, 1941, 23 have entered the armed forces, 8 have become U. S. government attorneys or attorneys for the state, 5 have died, 3 have retired, 2 are doing direct war work and 5 have entered other fields of endeavor.

During the past three months the Seattle Bar has lost six members through death. Space permits us to do no more than record their names: Glenn J. Fairbrook, Robert J. Faussett, Robert A. Hulbert, Roy D. Robinson, A. J. Laughon and Wilmon Tucker.

Lieut. John D. Cartano, U.S.N.R., has been awarded the Navy and Marine Corps Medal for heroism in the Southwest Pacific. Major George H. Revelle, Jr., has received the Order of the Legion of Merit for meritorious service in Italy.

Recently commissioned officers in the U. S. Naval Reserve include Lieut. (j.g.) Ralph B. Sproule, Lieut. (j.g.) George V. Powell, Ensign John N. Rupp and Lieut. (j.g.) DeWitt Williams.

### ERRATA

In the November, 1943, issue of the BAR JOURNAL, we published an address by Dean Judson F. Falknor of the University of Washington School of Law entitled, "The American Law Institute's Model Code of Evidence." 18 WASH. L. REV. 228. Due apparently to an error on the part of the reporter who reported the proceedings of the meeting at which the address was presented, two pages of the manuscript of the paper as read at the meeting were omitted from the published article. We apologize to Dean Falknor and publish herewith the omitted pages as follows:

(1) 18 WASH. L. REV., page 230. Between the words "order" and "and," on line 13, the following should be inserted:

". . . and manner of proof without phrasing or declaring any rule at all. For example, Rule 105, without laying down a normal rule or routine, gives to the trial judge discretion, among other things, to determine to what extent and in what circumstances leading questions shall be permitted and to determine to what extent and in what circumstances a cross-examiner shall be forbidden to interrogate a witness in respect to matters not germane to the direct-examination. In respect to the permissible scope of cross-examination, the Code makes no choice between, nor does it expressly recognize either of the two existing and conflicting rules. That is to say, it provides no normal or generally applicable procedure, apparently, according to Mr. Wigmore's view at least, leaving to the particular trial judge to determine as to each witness, more accurately as to each particular question on cross-examination, whether the so-called English or whether the federal rule shall control. I think it can plausibly be argued that the phrasing of the Code implies that the wide-open or English rule should represent the normal routine on cross-examination, although this is not expressed and

such an interpretation is far from certain. However that may be, there is substance, I think, to Wigmore's criticism. As drawn, the Code seems to permit each trial judge to adopt any rule as to cross-examination which appeals to him and it is quite conceivable that some trial judges in a county would conclude to follow one, and other judges in the same county the other, of the present competing rules. From the standpoint of the trial lawyer, the failure to adopt either rule as generally controlling may be questionable. Wigmore's criticism has nothing to do, of course, with the advisability of giving the trial judge discretion to vary under proper circumstances, whichever is recognized as the normal rule.

"Finally, while recognizing that the Code may represent an ideal of ultimate achievement, Wigmore questioned the expediency of proposing it at this time and its chances of profession-wide approval. He felt that some of the changes proposed were too radical to win general professional approval . . ."

(2) At page 233, on the seventh line of the last paragraph, between the words "doctrine" and "for," the following should be inserted:

". . . that a lay witness may give his opinion as to sanity, handwriting, intoxication, value, identity, speed and in a good many other situations. As I understand the Code, it in effect, reverses the present procedure by providing in effect that the opinion rule, as we know it, now becomes the exception rather than the rule. Specifically, the Code provides that a percipient lay witness may include in his testimony his opinion, inferences and conclusions with the provision that the trial judge may exclude his opinion if he finds that the witness can adequately communicate his knowledge without testifying in terms of inference and that his inferences would be likely to mislead the jury to the prejudice of the opponent. Here again, we are undoubtedly in a debatable area into which I shall not venture on this occasion. I merely call to your attention the fact that the Code would work a substantial change in existing practice. It should also be mentioned that the Code embodies the substance of the Uniform Expert Testimony Act.

"As to the hearsay rule, the Code starts out by providing that all hearsay is inadmissible except as specifically permitted by the Code. This is not as orthodox as it sounds because the later rules let down the bars to a very considerable extent. The most important relaxation is found in Rule 503 in which it is provided that evidence of any hearsay declaration is admissible if the judge first finds that the declarant is unavailable as a witness or is present and subject to cross-examination. The definition of unavailability is very broad and includes not only the death of the declarant, but as well inability to testify because of physical or mental illness, or absence from the place of trial permanently or temporarily if the absence is not due to the procurement or wrongdoing of the party offering the witness. This provision, of course, represents a very substantial relaxation of the present hearsay rule because under the present rule, generally speaking, unavailability of the declarant is no ground whatever . . ."

(3) On the fourth line of page 232 the word "compensation" should be "compensating."