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A PROGRAM OF GROWTH FOR OUR BAR ASSOCIATION

Our Washington State Bar Association has now been in existence for forty years. When I look back on the forty annual meetings of this Association, each with its inevitable presidential address, I am all but overwhelmed at the wisdom and the learning that have preceded me.

It is well that the science of jurisprudence and the administration of justice should engage our attention from time to time, and I am glad that my predecessors so uniformly kept their addresses to such high themes.

However, while we are officers of courts of justice, and engaged as students of jurisprudence, we are also men who must earn our daily bread, as other men must do. I therefore make no excuse if, in this address, I yield up to my predecessors and to my successors much of that just and proper concern for the welfare of society and offer a program that looks to the further development of the practical usefulness of this Association.

As we look about this land of ours we see that practically every human activity is organized. Most of these associations are highly useful and profitable to their individual members, so much so that heavy dues are paid without complaint, and their meetings are attended with an enthusiasm and a regularity that is chiefly displayed where men feel that their material interests are prospered by so doing.

I

Let me suggest a few of the problems that actually concern us as individuals in a work-a-day world, and that might well concern us as a group. First, is the changing character of the practice of the law. A generation or more ago, the practice of the law chiefly concerned itself with litigation. But as our human society becomes more stable and experienced, as it becomes settled in its institutions, as growth becomes more gradual, such profitable litigation tends to diminish, and the lawyer's work turns more and more to what we call office practice. Now litigation is the natural monopoly of the lawyer, but with respect to office practice, the case is, it seems to me, quite otherwise.

Within a generation, office practice, the work that in Great Britain is done by the attorney as distinguished from the barrister, has enormously increased, and it will continue to increase, both in

volume and variety. But as to much of this field we do not have any such a monopoly as we enjoy in the trial field. Let me instance a few of the many examples that will readily occur to you. For instance, title insurance is steadily narrowing the field of abstract examination by the lawyer. Commercial collection agencies are rapidly extending their work of collection of accounts and notes. The organization and incorporation of corporations is more and more slipping into the hands of legal incorporation companies. Insurance companies and trust companies are exhibiting a steadily increasing interest in the field of probate work, the establishment and administration of trust estates and other related activities. Similarly, a large group of claim adjusters are more and more increasing the number and variety of cases that they investigate and settle without reference to the lawyer.

So, too, the drafting of deeds, agreements, mortgages and other instruments of conveyance or incumbrance, is largely becoming a function of the realtor or other unqualified layman. The important and rapidly growing field of income and inheritance taxation is being widely cultivated by the Certified Public Accountant.

I am not at all an alarmist about these various invasions. But it is one thing to expect them and another thing to allow them to wreak their will at our expense without an effort to hold that which is desirable.

Take, for instance, the income tax law. A few lawyers in each of our cities have qualified themselves to advise and counsel in income tax matters and are prospering very largely, but much the larger percentage of our bar are declining this business altogether and allowing it to drift into the hands of Certified Public Accountants, who are indeed often of great assistance in the accounting end of the law. But only a lawyer can become fully qualified to deal with the legal principles involved in the interpretation of the law, and the lawyer's training in the arts of persuasion are especially needed in adequately presenting the facts to the special tribunals set up by the law for the determination of income tax matters. Manifestly, the lawyer who surrenders this whole field to the Certified Public Accountant runs grave risks of prejudicing the rights of his clients, to say nothing of the loss of business to his profession.

In Great Britain, the attorney is invariably employed, not merely to probate the will, but as well to supervise the management and administration of the trust estates during the entire existence of the trust. In this country the average lawyer is content almost without a struggle to allow complete supervision of these matters to pass to

the layman trustee, individual or corporate. The tremendous increase of wealth in this country makes this one of rapidly growing concern to the profession, who should be prepared, not only individually, but collectively as well, to see that their special qualifications to take charge of these matters should be more widely recognized.

But it is in the field of corporate organization and administration that there appears to exist the largest opportunity for the lawyer. Most lawyers seem content to draw the articles of incorporation, to prepare the minutes of first meetings, etc., and then forever to forget that here is a legal entity created by them in accordance with legal principles that continues to need the counsel and advice of the lawyer. Practically every form of business in our country is corporate, or soon to become incorporated.

From a swiftly growing and expanding civilization, a great diversity of entanglements and problems of policy arise, which require disinterested counsel, expert guidance and adroit representation. Such problems often involve only remotely, if at all, legal counsel. But the training of the lawyer in seeing both sides of a dispute, in sifting out the relevant and important from the irrelevant or unimportant, in analyzing complicated factual disputes, and in weighing the strength or weakness of an adversary's position, are of the utmost value.

It not infrequently happens that administrative problems of great corporate organizations so press upon the lawyer, who is their general counsel, that he altogether ceases to act as a lawyer and becomes a chief administrative officer. The *New York Times* recently published the statement that seven of the twenty-nine great railway systems of the United States have lawyers as their presidents. Among the list, it is interesting to note three of our great northwestern railway systems, the Northern Pacific, presided over by Mr. Charles Donnelly, the Chicago, Milwaukee, St. Paul & Pacific, with Mr. Henry A. Scandrett as its president, and the Chicago, Burlington & Quincy, with Mr. Hale Holden as chief executive.

But it is not merely the railways alone that have converted their lawyers into administrative chieftains. A goodly number of public utility companies, of insurance companies, and of industrial corporations are likewise presided over by lawyers at this time. Since the industrial corporation would seem the least promising field for the lawyer, it may be well to instance, out of a number of less well known examples, the fact that Judge Gary was for many years the head of our greatest corporation, the U. S. Steel Corporation, and

that Cornelius Kelly, who addressed the American Bar Association at Seattle last year, as the president of the Anaconda Copper Mining Co., had a highly successful career at the bar before accepting his present position.

That business men, and able executives are not infrequently swift to recognize the lawyer's fitness for dealing with administrative problems is perhaps best shown by the fact that the Nation's chief executive, Herbert Hoover, has chosen lawyers for the majority of the positions in his cabinet, and that ten out of the eleven members of his Crime Commission are likewise lawyers.

But a large number of the members of the Bar have their eyes fixed on the past, when the lawyer was chiefly the advocate in the courtroom. They look upon the decrease of large litigation with pessimism for the future of the profession and they ignore the cultivation of this lucrative field of corporate administration, with the result that, while some of the corporate business of America leans heavily upon its general counsel for guidance, a large majority of our business men reflect the common attitude of many members of the Bar and look upon their legal counsel as useful only when litigation impends.

If the profession, both individually and collectively, realize the advantages to the profession in encouraging the use by the business men of America of the special talents and training of the lawyer in the solution of the problems of taxation, of trust estates, of business and corporate administration, then the future of the members of the legal profession has never been brighter than it is at this present time.

II

"But—" you will say Yes, I acknowledge, this is the time and place for doubt. Skepticism is, indeed, a part of our special talent that makes us useful, and lawyers are especially skeptical when one of their own number, whom they justly recognize as no wiser than any of the rest, ventures to offer good advice to his fellows.

Allow me to disarm the doubters as speedily as may be. I have no compendious remedy to offer. I have tried to point out what I believe most of us will recognize as facts. When it comes to the remedy, I can only say that the remedy rests in the collective good sense and the collective good counsel of the members of the Bar. And I venture to suggest that our State Bar Association is the organization that should be developed to grapple with these problems.

After a year's experience as president of this association I am

profoundly convinced that this association is not so organized that it can be of practical assistance to the lawyer. This association's program is complete when it has held an annual meeting once a year, attended by perhaps one lawyer in ten, when it has listened to learned addresses and has enjoyed the good fellowship of those who attend.

I would not make light of these accomplishments. But, with the highest regard for this good-fellowship and this learning, I insist that they are not enough. Indeed, the good-fellowship will be much heightened, because it is more generally shared, and the learning will enlighten many more of our members, if we contrive to make this association useful in the daily tasks of making a living for its members.

What is the weakness in our organization that so narrows its field of usefulness? Any organization in any profession, or in any vocation, that is to function vitally in the daily lives of its members must have some one whose daily task it is to see that that organization functions. Let me emphasize again, and repeat that it must be a daily task. Furthermore, there must be a medium of communication, cheap and not too infrequent, by which the officers of that organization can address the membership. If the only contact of the member is by traveling, at what is often heavy expense, especially to the younger members of the Bar, then the membership will necessarily be limited, and the attendance small. To make this organization of practical use, we have two essential needs, and I mention them together, for each is dependent for success upon the other.

III

These two needs of our association are first, a paid executive secretary, to serve under the direction of the officers of the association, whose duty it will be to give part of each day to the development of the program of the association, to the tasks of following up the work of the committees, to the solicitation of lawyers to become members of the association, and to the collection of dues. For the first two or three years at least, such an executive secretary need be only a part-time officer, giving a half or a third of each day to the work of the association.

The other need of the association that is equally important is that we should have a publication to be received by each member, with news at regular intervals of the work of the association, accompanied by the publication of articles of especial interest and value to lawyers of the state of Washington. We have available

for that purpose an admirable medium in the WASHINGTON LAW REVIEW, published quarterly by the Law School of the University of Washington.

Three years ago, when this LAW REVIEW was barely a year old, the then president of this association, J. A. Coleman of Everett, being deeply impressed with the value of the LAW REVIEW to the lawyers, strongly urged this association to make the LAW REVIEW the official journal of this association. Mr. Coleman pointed out that other state university law journals in such states as Michigan, Minnesota, West Virginia and Texas had been so adopted as the official journals of their respective state associations. Since Mr. Coleman's suggestion was made, a number of other states, including California, Connecticut, Alabama, Illinois, Indiana, North Dakota and New York, have each established or adopted a Bar Association Journal for these purposes.

For the first 35 years of the existence of the American Bar Association, that association grew but slowly, but in its last fifteen years its growth and increase of usefulness has been remarkable. Its officers justly attribute this highly gratifying expansion, in part, to the publication during that period of the American Bar Association Journal, which has done so much to weld the individual members of the Bar of America into one cohesive organization, wielding an ever enlarging influence. Through the monthly publication of that splendid journal, under the able editorship of Major Edgar B. Tolman, many thousands of members of the American Bar Association who never find it possible to attend an annual meeting, nevertheless keep in close touch with the work of the association, contribute gladly to its support, and share in the chief benefits of the association.

Nearly 90 per cent of the lawyers of this State are absent from each meeting of this association. Those who are absent have little or no participation in, or knowledge of, what is done or said at these meetings, unless in some idle moment the absent lawyer happens to glance in the annual volume of our deliberations. With an official publication sent to each member, and with each issue of that publication brief enough to invite rather than repel the attention of the busy lawyer, and with an executive secretary whose first duty it should be to see that our membership is brought and kept up to include practically all of the active and respected members of the bar, we can have an association that will confer the maximum of benefits that such an organization can bring to the lawyers of this state.

IV

For the past nine years, the Honorable William J. Millard, now a valued member of our Supreme Court, has been the secretary-treasurer of this association. During all of this period, Judge Millard has served us wholly without compensation. Although his first allegiance has necessarily been to his official duties, nevertheless such time as Judge Millard could spare, he has freely devoted to the work of this association. All that a man could do under such circumstances, Judge Millard has done.

Few realize how much there is to be done. Let me attempt a partial enumeration. With reference to the annual reports of our proceedings, Judge Millard has edited the text, collected from busy or careless lawyers the manuscripts of their addresses, and has looked after the printing and distribution. He has made up our programs, arranged for our annual banquets, looked after memberships, collected in the dues, paid from our treasury all of our obligations, sent out the notices of our meetings, conducted an extensive correspondence with lawyers all over the state, attended trustees meetings, assisted in the organization of county associations, traveled about the state in attendance upon local gatherings of members of the bar, where he has preached to us, individually and collectively, the gospel of loyalty to the association, and in many other ways has attended to a great mass of detail, too multifarious here to describe.

But lavish as Judge Millard has been with his time and efforts in our behalf, there is much that needs to be done for this association that no man, not even Judge Millard, can do merely in his leisure hours, and that has necessarily gone unperformed.

Presidents and vice-presidents are here today, and gone tomorrow. If we are to have continuous effort expended in our behalf, if we are to have our policies put into effect, we must have a compensated official who is responsible to us for the performance of all the details of administration that may safely be confided to him. Our presidents, vice-presidents and general secretary, relieved from the details that now clutter up their foreground, with dependable assistance, can more readily attend to the more important matters that ought to engage their attention. Furthermore, there will be much more incentive to the members of the association to suggest helpful lines of activity to the association, when they realize that we have the organization that can give continuous attention to the work.

Our standing and special committees are annually appointed,

but it is rarely that they function. Their meetings need to be arranged, they need to be reminded from time to time of what is expected of them, else nothing is done. If these secretarial details are arranged for the chairmen of the committees, we can make our annual meetings much more fruitful by having careful and thoughtful reports submitted to the bar.

The paid secretarial staff of the American Bar Association, under the capable management of Mrs. Olive Ricker, its executive secretary, is an admirable illustration of what can be accomplished. The extensive and careful reports of the many committees of the American Bar Association are printed and mailed out to each member of the association, in advance of the annual meeting, so that each member in attendance knows in advance what is to be considered, with opportunity to reflect on the best that can be said for or against a given proposal. It is only necessary to recall the very extensive accomplishments of the National Conference on Uniform State Laws and the Committee on American Citizenship to realize how efficiently the busiest of lawyers function in association work, where the secretarial details are taken care of for them.

It would be ridiculous to expect any such magnificent accomplishment from our committees as results from the American Bar Association, if, for no other reason that a single part-time secretary would be altogether inadequate to the task. Nevertheless, the accomplishment is there, as an example and an inspiration to us resolutely to undertake the task of doing what is possible with our smaller means and our lesser membership.

VI

At this point there are, I trust, a number of you sufficiently interested to be saying to yourselves, "Sounds good, but can we afford it?"

First, of the salary of the executive secretary. How much service can we afford, for how little money? I am advised that the Judicial Council is in need of a part-time paid secretary, and that it has the money with which to pay such an employee. I have stressed the fact that such a secretary for this association should pay special attention to membership problems. The most fruitful source of new members is in King County, where less than 50 per cent of the lawyers are paying members of the local association. Under our affiliation plan, only those members of the County Association are members of the State Association, and therefore the loss of King County is our loss as well. In the smaller coun-

ties, the percentage of lawyers who are members of the association is much higher, but the number of lawyers in King County is so great that mere voluntary work on membership breaks down. Therefore, King County, as well as the State Association can use to advantage a part-time paid secretary to work on membership, programs, etc.

If the Judicial Council, the State Association and the King County Association will unite on one individual for these three positions, all three can afford it, and the burden on each will not be heavy. Since the work done by that executive on King County membership will benefit us as well as King County, more than half of his time will be spent in work by which our association will profit, although we need pay only a third of his salary. While working for the State Association, his time should be spent on memberships in counties other than King, thus other county associations will profit from his work, and can afford to contribute a little more than they are now doing, per capita, to the State Association. When we consider what the voluntary labor of a few has done for our membership, it is clear that consistent follow-up work, from day to day, can largely increase our membership throughout the state. In other words, a fairly efficient executive should increase our revenues by substantially more than we pay him. Our share of his salary and expenses should not exceed a thousand dollars.

Furthermore, it is to be noted that, while we would pay for but a third of the expense of such a secretary, all of his time would be devoted to problems vitally concerning the lawyer, and we would thereby obtain the full benefit of all of his labor.

VII

Next, of the official publication. We now print a bulky volume of our annual proceedings, sometimes running in excess of 200 pages. It generally contains practically every word uttered, and every line of every manuscript read at the annual meeting. The result is that it is probably the most thoroughly neglected piece of literature that comes to a lawyer's desk. Its printing and distribution are highly expensive, and take the lion's share of our annual revenues. I suggest that much is said at these meetings that is of value only for the audience there present, and that the proceedings and the manuscripts, as well, should be boiled down to the utmost conciseness. It is far better that we should print five or ten thousand words that are read by some of our members than

that we should print 60,000 or 75,000 words, which are read by none of our members. Our proceedings, thus distilled to their essence, can be readily printed in our official journal without burdening it.

Several hundred of the members of this association now cheerfully subscribe to the Journal, feeling that its contents justify the subscription, and by making it our official organ all can share in the benefit derived from the carefully prepared articles on various aspects of the decisions of our Supreme Court, while the Review serves likewise as a medium for the dissemination of news concerning the association's activities.

VIII

The provision thus suggested for the employment of a part-time secretary, and an official publication coming four times a year, is, in sense, a makeshift. If, as I believe, we find that our profession substantially profits by these modest expenditures, we may feel justified in the future in moderately increasing our outlay, to obtain a full-time executive secretary, or to increase the usefulness to us of our official organ, or both.

IX

We live in a highly competitive world, a world in which the modern technique of earning a living in every line of endeavor is steadily being developed to a higher and higher point of intensity and ingenuity. More than ever before, we need watchfully to guard from commercial invasion the field of our activities, and to extend our usefulness to society wherever profitable.

The older, well established lawyers may not be so conscious of the various encroachments of which I have spoken, they may not realize so keenly the growing tendency of possible clients to prefer other agencies than the lawyer, where there is room for choice, but the younger lawyers are keenly aware of it. If this association is to appeal to the younger lawyers, if it is to receive more than lip-service from them, it must plan to be of real value to them, it must furnish an associative opportunity by which the lawyers can help themselves through the association. To that good end, as well as to the end that our usefulness in all our present well-established lines of endeavor may be increased, I make the recommendations contained in this paper, and I commend them to your thorough candid consideration.

B. H. KIZER.*

*President, Washington State Bar Association, 1929.