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## Report of Committee on Federal Legislation

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<i>Local Administrative Committee</i>	<i>Term Expires</i>	<i>Trial Committee</i>	<i>Term Expires</i>
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T. T. Grant, Spokane.....	1938	Frank P. Weaver, Spokane.....	1939
J. A. Brown, Spokane.....	1940	A. J. Hutton, Spokane.....	1939
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#### SIXTH CONGRESSIONAL DISTRICT

<b>Pierce</b>			
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De Witt Rowland, Tacoma.....	1940	L. R. Bonneville, Tacoma.....	1939
Frank M. Carnahan, Tacoma.....	1938	R. C. Carlson, Tacoma.....	1939
Herbert Cochran, Tacoma .....	1939	H. G. Fitch, Tacoma.....	1939
Archie E. Blair, Tacoma.....	1939	Arthur F. York, Tacoma.....	1939

## Report of Committee on Federal Legislation

The following report of the Committee on Federal Legislation was submitted to the Bar Association at its annual meeting in August at Bellingham:

The legislation of the 75th Congress most important to the members of the Bar Association is that relating to the Federal Judiciary. On February 5, 1937, the President sent a message to Congress transmitting a recommendation to reorganize the judicial branch of the federal government and attaching a bill to this message for that purpose. The principal section of the bill related to the Supreme Court of the United States and, in effect, provided that all justices of that court should be eligible for retirement at 70 and in the event they did not retire, the President could appoint other justices equal in number to those eligible for retirement until the court was composed of 15 justices. The justices affected were Brandeis, 80; Van DeVanter, 77; McReynolds, 75; Hughes, 74; Sutherland, 74, and Butler, 71. Increases were also to be authorized in other federal courts, not to exceed 50 in all. District judges thereafter appointed, were to be subject to assignment to any district court in the United States. A proctor was to be appointed to investigate the business of the court, to recommend assignment of judges and to make suggestions for expediting the business of the court. After protracted and extensive hearings by the Senate Committee on the Judiciary on the bill, the committee, in a majority report, recommended the measure be rejected. There was no minority report. The reasons stated for the rejection were:

"I. The bill does not accomplish any one of the objectives for which it was originally offered.

II. It applies force to the judiciary and in its initial and ultimate effect would undermine the independence of the courts.

III. It violates all precedents in the history of our Government and would in itself be a dangerous precedent for the future.

IV. The theory of the bill is in direct violation of the spirit of the American Constitution and its employment would permit alteration of the Constitution without the people's consent or approval; it undermines the protection our constitutional system gives to minorities and is subversive of the rights of individuals.

V. It tends to centralize the federal district judiciary by the power of assigning judges from one district to another at will.

VI. It tends to expand political control over the judicial department by adding to the powers of the legislative and executive departments respecting the judiciary."

"We recommend the rejection of this bill as a needless, futile, and utterly dangerous abandonment of constitutional principle.

It was presented to the Congress in a most intricate form and for reasons that obscured its real purpose.

It would not banish age from the bench nor abolish divided decisions.

It would not affect the power of any court to hold laws unconstitutional nor withdraw from any judge the authority to issue injunctions.

It would not reduce the expense of litigation nor speed the decision of cases.

It is a proposal without precedent and without justification.

It would subjugate the courts to the will of Congress and the President and thereby destroy the independence of the judiciary, the only certain shield of individual rights.

It contains the germ of a system of centralized administration of law that would enable an executive so minded to send his judges into every judicial district in the land to sit in judgment on controversies between the Government and the citizen.

It points the way to the evasion of the Constitution and establishes the method whereby the people may be deprived of their right to pass upon all amendments of the fundamental law.

It stands now before the country, acknowledged by its proponents as a plan to force judicial interpretation of the Constitution, a proposal that violates every sacred tradition of American democracy.

Under the form of the Constitution it seeks to do that which is unconstitutional.

Its ultimate operation would be to make this government one of men rather than one of law, and its practical operation would be to make the Constitution what the executive or legislative branches of the government choose to say it is—an interpretation to be changed with each change of administration.

It is a measure which should be so emphatically rejected that its parallel will never again be presented to the free representatives of the free people of America.”

The report of the committee was adopted. Thereafter Congress considered and passed a bill that will do four things to the procedure of lower courts—not the Supreme Court. Those things are:

1. To permit the federal government, through the attorney General, to take a hand in any lawsuit involving the constitutionality of any federal statute where that constitutionality is seriously in dispute. The lower court would be required to advise the attorney general of the proceeding and to allow him to offer evidence.

2. To provide for an appeal directly from a lower court to the Supreme Court in case of a district court decision holding an act of Congress to be in conflict with the Constitution. Now the normal course of legal proceedings results in the lapse of a year between the time a lower court overturns a federal statute and the Supreme Court passes upon its action. The proposed change would be expected to cut that average time in half.

3. To prohibit any injunction preventing enforcement of any federal statute on the ground that it violates the Constitution unless there has been a trial court consisting of three judges, one of them a circuit judge. Any single judge now can rule out a statute enacted by Congress and approved by the President. In the case of A.A.A. processing taxes, 1,600 such injunctions were issued. The change in procedure is made as one way of requiring more thorough consideration before stopping the enforcement of an act of Congress.

4. To require the temporary shifting of district judges whenever there is an accumulation of work in one district. This is designed to speed up justice.

Another judiciary bill which passed the House of Representatives but which did not pass the Senate was the Ramsey bill providing that in federal courts “the form, manner and time of giving and granting instructions to the jury shall be governed by the law and practice in the state courts of the state in which such trial may be had” and the judge is prohibited from comment unless authorized by the state law. The American Bar Association has repeatedly and unanimously disapproved legislation

along this line. Such action was taken in 1918, and every year from 1925 to and including 1930.

The judicial code has been amended by providing for the inclusion of Whitman County in the northern division of the eastern district, with terms at Spokane instead of Walla Walla.

*Death Punishment—*

Death punishment in federal cases hereafter is to be inflicted in the manner prescribed by the laws of the state within which the sentence is imposed and state facilities therefor may be used by the United States marshal. If the state provides for no death penalty, the court must designate some other state in which the sentence shall be executed in the manner prescribed by the laws thereof. The death penalty may, therefore, be imposed and executed in Washington.

*Narrows Bridge—*

The time within which the bridge over Puget Sound at the Narrows in Pierce County may be constructed has been extended to 1940.

*Pacific Coast Fisheries—*

The United States and Canadian Halibut Convention signed at Ottawa, January 29, 1937, has been supplemented by the Northern Pacific Halibut Act of 1937 which makes it unlawful for anyone other than nationals or inhabitants of the United States to catch halibut in the territorial waters contiguous to the Western United States coast or the Northern or Western coasts of Alaska, or to bring halibut in in any other than a vessel of the United States or Canada, or to outfit vessels other than those of Canada or the United States. Possession of other halibut and catching of halibut without a license is prohibited. Power is given the Coast Guard Custom Service and Bureau of Fisheries to search, seize and arrest, and fines of \$100 to \$1000 or imprisonment for not more than a year may be inflicted, together with forfeiture of catch, cargo, and vessel. One month after the passage of this act the United States and Canada exchanged ratification of conventions for the preservation and extension of the sockeye salmon fisheries of the Fraser River system and for the preservation of the halibut fishery of the Northern Pacific Ocean and the Bering Sea.

*Judiciary Civil Service—*

One act places all officers and employees of the courts of the United States under civil service retirement act.

It was not until the court reorganization bill was disposed of during the last days of July that Congress undertook to act upon any considerable amount of legislation of general interest. Some have heretofore been reported. Others approved by the President prior to the making of this report are:

*The Relief Act—*

Congress appropriated by joint resolution one and a half billion dollars to be used in the discretion and under the direction of the President to provide relief, "and work relief", 415 million, or almost half a billion, of which is to be available for highways, \$630,000,000, or considerably more than half a billion, for public buildings, parks, recreational facilities, public utilities, electrical

systems, sewer systems, water supply, airports, transportation facilities, flood control, conservation, eradication of insects, and miscellaneous work projects; \$380,000,000 for educational, professional and self-help, and clerical persons and women's projects, and \$75,000,000 for National Youth Administration. The amount is to be spent before June 30, 1938.

*A.A.A.—*

The Agricultural Adjustment Act, hitherto declared unconstitutional, has been amended in an effort to conform to the objections to its validity recorded in the decision and the act is now based upon a declaration "that the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce." The provisions of the A.A.A. are expressly reenacted which relate to policy, violations and enforcement, marketing agreements, orders, books and records, base period for determination of prices, imports, appropriations and expenses and miscellaneous matters. The evident purpose of the amendment is to change only such portions of the act as are, in the opinion of its framers, necessary for its constitutionality.

*Farmers Home Corporation—*

The Bankhead-Jones Farm Tenant Act provides for loans to farmers of all classes to purchase farms on 40-year installments at 3 per cent interest, appropriating from \$10,000,000 to \$50,000,000 to make the loans; authorizes loans to purchase livestock, farm equipment, supplies, farm needs, refinancing indebtedness, family subsistence, on five-year renewal periods; purchase of "lands which are submarginal or primarily not suitable for cultivation" to adapt it to its most beneficial use, to dispose of it by sale or otherwise "with or without a consideration"; to give it away for any public use, to pay 25 per cent of its net revenue to counties, all to be done in the name of the Farmers' Home Corporation, all of whose employees are to be outside of civil service and at compensation to be fixed by the administration for local residents, to rent property, purchase law books and other publications, pay for travel and subsistence, purchase, operate and maintain passenger-carrying and other vehicles and pay "for such facilities and services" as the Secretary of Agriculture "may from time to time find necessary for the proper administration of the Act," make contracts for services and purchases of supplies without regard to the limitations of the Revised Statutes over \$300, make payments prior to audit, acquire land and interests therein irrespective of statutory limitations, and settle claims as circumstances may require. He can appoint three farmers as a committee in each county at \$3 a day plus travel and subsistence expenses. A large amount of the property acquired is to be not subject to taxation. The act covers all the territory in the United States, including Alaska, Hawaii and Puerto Rico.

A most comprehensive authority has been given one of the

agencies of the government in an act which, though vitally important, has been but little noticed. The Federal Surplus Commodities Corporation is authorized to take a third of all the customs duties of the United States and also all of a ten million dollar appropriation and to use this money to encourage the domestic consumption of agricultural commodities or products by diverting them "by the payment of benefits or indemnities or by other means from the normal channels of trade and commerce." The 1937 act provides that all these funds "may be used for purchasing, exchanging, processing, distributing, transporting, storing, and handling of agricultural commodities and products thereof and inspection costs, commissions, and other incidental costs and expenses, without regard to the provisions of existing law governing the expenditure of public funds and for administrative expenses, including rent, printing and binding, and for the employment of persons and means in the District of Columbia and elsewhere."

There is no other instance known of any such blanket spending for men and goods without a check, as is here given.

The provisions for payments to farmers under the Soil Conservation and Direction Allotment Act have been extended beyond the presidential election year of 1940 to 1941 and 1942.

The Civilian Conservation Corps of 300,000, including 30,000 veterans and 10,000 Indians, is continued for three years. The veterans and Indians may be married ones, but the others must be single and unemployed. They receive \$30 for from six months to five years, together with quarters, subsistence, clothing, medical attention, hospitalization and transportation. Three hundred fifty million dollars is appropriated for the corps.

Credit unions are authorized to use space free in federal buildings.

The federal government has created an insurance fund and now insures itself against loss of valuables in shipment. Government securities lost, stolen or destroyed may be issued in duplicate upon giving bond in some cases and without bond in others.

The first railroad retirement act was declared unconstitutional, but the railroad express and sleeping car employees and those of employer subsidiaries are now, under an agreement between employers, employees and the government, carried into a retirement statute, available for pensions, limited to a maximum of \$120 a month. The act also includes railway labor organizations and their employees. Retirement may be had but is not compulsory at 65, or at 60 after 30 years' service or total disability, or any age after 30 years' service. Provision is also made for limited death benefits. The fund is provided for by an appropriation into the Railroad Retirement Account of an amount annually sufficient to pay annuities, pensions and death benefits, any surplus to be invested in U. S. bonds. The amount is to be raised by a levy of an equal amount upon employers and employees running from 2¾ per cent in 1937 to 3¾ per cent in 1948 upon wage earnings up to \$300 a month, and by a Congressional appropriation of \$99,880,000 for the account.

Seeing-eye dogs are given the right to free transportation on railroads.

The Federal Register Act of 1935, which provides for the publication in the government serial, The Federal Register, of all Presidential proclamations, executive orders, and all federal agency orders, regulations, rules, certificates, codes of fair competition, licenses, notices or similar instruments, has been amended to provide for the publication on July 1, 1938, and every fifth year thereafter, of a complete codification by each federal agency of all documents which "have general applicability and legal effect" and are in force and effect on June 1.

A joint Senate and House resolution appointed a Joint Committee on Tax Evasion and Avoidance to investigate the methods of evasion and avoidance of income, estate and gift taxes and report before February 1, 1938, recommendations of remedies. This committee is now holding hearings.

In addition to three private secretaries to the President on salaries of \$10,000 each, one of whom is his son, Congress was asked to authorize the employment of six additional ones at like figures and whose qualifications are specified by the President's Government Reorganization Committee as follows:

"They should remain in the background, issue no orders, make no decisions, emit no public statements. They should be men in whom the President has personal confidence and whose character and attitude is such that they would not attempt to exercise power on their own account. They should be possessed of high competence, great physical vigor and a passion for anonymity. They should be installed in the White House itself, directly accessible to the President."

A measure of importance to the health of the nation is the act sponsored by Senator Bone of Washington establishing in the District of Columbia a National Cancer Research Institute at a cost of \$750,000, under the Public Health Service, and making an annual appropriation of \$700,000 for the study of the disease, its cure and eradication.

At the date of this report there are several bills under consideration, the most controversial of which is the wage and hour measure fixing minimum hourly compensation and maximum hours of service in industry. Some form of legislation covering this subject and also slum clearance and housing may be enacted.

The majority of the members of the Committee on Federal Legislation believe that the most important act of the 75th Congress was the defeat of the legislation designed to increase and change the Supreme Court and to establish a flying squadron of federal judges. By the action of a determined band of senators, regardless of party, who opposed the passage of the bill sent to the Senate by the President, a decisive step was taken against the destruction of the independence of the court as the final arbiter

of the constitutionality of the acts of the legislative and executive branches of the government. The Supreme Court is the last refuge of the citizen. It secures him from legislative tyranny and arbitrary executive action. A court is not truly a court unless it acts with complete independence, resists every encroachment upon rights, stipulated for in the Constitution, and stands as an impenetrable bulwark against every assumption of power in the legislative or executive tending to diminish that independence. The scales of justice must be held in impartial hands and not be thrown out of balance by forced dependence upon political power. That this independence was preserved to the courts by the action of the Senate is a glowing tribute to the great sense of appreciation of the fundamental principles of government necessary to the preservation of the American state.

Respectfully submitted,

COMMITTEE ON FEDERAL LEGISLATION

CHARLES S. ALBERT, *Chairman*

WILLIAM M. ALLEN

LAWRENCE BOGLE

FRANK R. JEFFREY

H. B. JONES

BEN H. KIZER

N. C. RICHARDS

OTO B. RUPP

ALFRED J. SCHWEPPE

R. J. VENABLES

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**Supplemental Report on Federal Legislation**

The first published report of the Committee on Federal Legislation covered a portion only of the enactments of the 75th Congress. Since that publication, a number of important acts have been passed and approved. In order that the members of the Washington State Bar Association may know what they are, the recently appointed Committee on Federal Legislation appends a brief summary of their principal features:

*Judiciary.* The Supreme Court enlargement bill was defeated. Senator Schwellenbach has since advised the members of the Seattle Bar Association that such legislation is dead.

No bankrupt or attorney in any receivership, bankruptcy or reorganization proceeding may now enter into any agreements respecting any fees to be paid from the assets, and no federal judge may approve of any such fee or appoint as receiver or trustee any person related to him within the fourth degree of consanguinity.

Federal jurors' fees are now fixed at \$4.00 a day instead of \$3.00.

*Relief.* Out of the relief appropriation, \$50,000,000 has been set aside for a census showing the numbers, classes and geographical distribution of the partially employed and unemployed. This is being attempted through blanks sent out by the post office.

To destroy old houses and build new ones, a Housing Authority has been created, which has authority to buy all kinds of property and to make loans up to 90 percent of cost. Contributions are to be made over a number of years to public housing agencies. Rents are to be fixed by the Authority. Dwelling units in places of less than 500,000 are limited to \$4000 and rooms to \$1000, excluding land, demolition and non-dwelling facilities. Over 500,000 the limit is raised to \$5000 a house and \$1250 a room. The Authority may issue tax exempt, guaranteed obligations up to \$500,000,000 with 4 per cent interest.

Fifty million dollars is appropriated to enable the Governor of the Farm Credit Organization to make loans to farmers in the United States, Hawaii and Puerto Rico for agricultural livestock purposes.

The Federal Farm Mortgage Corporation is authorized to loan money to the Land Bank Commission to secure postponement of mortgage foreclosures in case of defaults in interest, principal or taxes. The United States and Alaska are divided into twelve farm credit districts, each with boards of seven members, having power to authorize the acquisition and disposal of all property as may be necessary or convenient for the transaction of the business of the Federal Land Bank, the federal intermediate credit bank, the bank for cooperatives and the production credit corporation, and as the board sees fit.

The Secretary of Agriculture is given authority to say how much sugar each year is needed for consumers in the United States and to divide the business up among the producers. Whenever he feels the market for sugar has to be taken care of, he is given the power to make allotments of the quantities of sugar each person may market in the United States, Hawaii and Puerto Rico. Direct consumption quantities are limited for each of the countries of Hawaii, Puerto Rico, the Virgin Islands, the Philippines and Cuba. No one can import, ship, transport or market any sugar in excess of the quota. The secretary is authorized to pay a subsidy of 60 cents a hundred, conditioned on no child labor, and wages paid, cultivated areas limited, sugar bought, and policies for improving the soil and preventing erosion being carried out, as fixed by the secretary. He is also authorized to make substantial payments for the abandonment of planted acreage and crop deficiencies of harvested acreage resulting from drought, flood, storm, freeze, disease or insects. A tax of about one-half a cent a pound must be paid by manufacturers of sugar and importers. Fifty million dollars is given the secretary to carry out the act and he may take the Philippine sugar taxes to finance a program of economic adjustment there.

Because of the declared wastage of water, the Secretary of Agriculture is authorized to plan projects of power reservoirs, pumps, wells and dams in the arid and semi-arid lands, to sell or lease these facilities and lands with or without a money consideration, to enter into agreements with anybody; to obtain options and acquire lands, water and water rights owned by anyone. He may require maintenance agreements from anybody and contributions from operations benefitted.

The Secretary of the Interior is authorized to buy, lease or condemn all helium properties, to construct plants, buy patents and after purchase to sell anything not valuable for helium production, and to lease lands and structures for grazing or any other purpose.

The Secretary of Agriculture is given authority to take the taxes on firearms, shells and cartridges, and apportion one-half of them to states in proportion to areas, and one-half in proportion to hunting licenses, not to exceed \$150,000 in each state, for wild life conservation and research.

In a number of the acts under this heading, provision is made for use of funds appropriated without regard to the provisions of existing law governing the expenditure of public funds. Contracts may be changed and "any rule of law contrary to this provision shall be deemed inapplicable." Power is given the secretaries to hire officers and employees and pay salaries up to \$10,000 a year, and to spend money for personal services, rents, automobiles, supplies and equipment, to pay traveling and administrative expenses, to sell or lease lands and structures "with or without a money consideration" and in the case of the Eskimos to give away not only reindeer and caribou, but other property, including profits made on reindeer deals and also the powers granted under the act.

*Power.* The Bonneville Dam has been placed under the jurisdiction of the Secretary of War and supervision of the Chief of Engineers, subject to the duties of the Bonneville Power Administrator, James D. Ross, respecting the transmission and sale of electric energy. The secretary must provide, operate, maintain and improve the facilities as designated by the administrator. To encourage the widest use and to prevent monopolization of electric energy, he is directed to construct and operate facilities to interconnect the Bonneville system with other publicly owned power systems and to do this he can purchase, lease or condemn any and all kinds of property, including privately owned power systems, and then dispose of any personal property he thinks he does not need. Cooperatives have 50 percent of the energy reserved to them until January 1, 1941. He is to fix rates at wholesale, but no private person may resell.

The Interstate Commerce Commission is authorized to require carriers to install block signal systems, interlocking, automatic train stop, train control, cab signal devices and similar appliances, methods and systems intended to promote the safety of railroad operation.

*Alaska.* A referendum is to be submitted at the 1938 general election on a bill providing for a one-house legislature in Alaska.

No one can fish for commercial purposes in the Bristol Bay area who has not been a continuous five-year resident within thirty miles of the staked or set net.

Air mail into and from Alaska is authorized to be contracted for and postage is not to exceed 30c an ounce.

The Secretary of the Interior is authorized to provide subsistence for Alaska Eskimos by acquiring the reindeer industry. All

owners, other than natives, must file with him before September 1, 1938, declarations of ownership. He is then authorized to purchase reindeer and other property necessary for the industry, to manage it and to distribute the reindeer, caribou and other property among native Indians, Eskimos and Aleuts, of whole or part blood. Two million dollars is appropriated for the purpose.

The United States and Canadian Convention signed at Ottawa January 29, 1937, has been supplemented by the Northern Pacific Halibut Act limiting catches on the Pacific Coast to nationals, carriage of halibut and outfitting to Canadian and United States vessels, and fishing to licensed fishermen. Power of search, arrest and seizure is given the Coast Guard, Customs Service and Bureau of Fisheries, with penalties of fines, imprisonment and forfeiture of catch, cargo and vessel.

*National Forests.* Several townships have been added to the Snoqualmie and Columbia National Forests.

*Narrows Bridge.* The time within which the bridge over Puget Sound in Pierce County may be constructed has been extended to 1940.

#### FEDERAL LEGISLATION COMMITTEE

CHARLES S. ALBERT, *Chairman, Seattle*

D. H. BONSTED, *Yakima*

G. H. BUCEY, *Seattle*

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J. T. S. LYLE, *Tacoma*

F. D. METZGER, *Tacoma*

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GEORGE R. STUNTZ, *Seattle*

SAM R. SUMNER, *Wenatchee*

CLAUDE E. WAKEFIELD, *Seattle*

## The Functions of a Trial Committee Under the State Bar Act\*

I have been asked to talk today upon the functions of Trial Committees as they exist under the State Bar Act. The act, as you know, was enacted in 1933 and created a body corporate therein designated as "an agency of the state" to be known as the Washington State Bar Association, vesting in it the right to sue and be sued, hold property and to do those other things which are ordinarily incidental to the existence of a corporate entity. The members of the Association are the lawyers of this state, and the Association is governed by a Board of Governors whose supervisory

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\*Speech delivered by De Wolfe Emory of Seattle at a meeting of Trial and Local Administrative Committees at 1937 Convention of Washington State Bar Association.