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## Report of Committee on Unauthorized Practice of Law

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Parent-Teachers, Washington State Chapter of War Mothers, Washington State Conference of Social Workers and so on. There must be 50 in that pile. Those are the organizations alone, not to speak of the countless letters and telegrams from leading individuals. All one way

Now, those people have heard only one side of this issue, and I submit to the members of this Association that it is our responsibility as lawyers to educate the people of this state and organizations of every sort on what is the basic issue, and what is the right answer to it. Bear in mind that the legislature under our form of government should be responsive to the wishes of the people. Now, this legislature knew that the people had heard only one side—that was the wrong side—and they stood fast on the principle, but we could not put forth an affirmative program because we didn't have the crystallized sentiment of the people of the State of Washington behind us. With your help we can get that crystallized sentiment in favor of good legislation at the next session of the legislature. It should be possible to have a good juvenile court bill. I thank you very much.

### **Report of Committee on Unauthorized Practice of Law, by DeWolfe Emory**

The committee on the unauthorized practice of law is composed of ten lawyers residing at various points in the state, all of whom, save possibly the chairman, are unquestionably qualified and were certainly zealous in the handling of the committee's affairs. This committee has been a committee which has tried to take an active interest in the work during the last year. Though the members of the committee come from all corners of the state, several meetings were held at Seattle, participated in by the full committee, Mr. Statler coming from Colfax, Mr. Freeman coming from Spokane and others coming from distant points.

At those meetings we have analyzed the complaints with respect to the unauthorized practice, which have been routed to the committee and sifted through to the committee, from the active sifting agent, Mr. John Riese, a lawyer of Seattle, who has been retained on a part time basis by the committee to process complaints, interview witnesses and brief the law. During the past year we have passed on some 30 or 40 complaints of unauthorized practice submitted by the members of the Bar from all points of the state; we have discussed them in committee meetings and after our recommendations and conclusions have been

arrived at, they have been imparted to the offender, and in most cases the offender has agreed to be the subject of a consent decree, so to speak, in connection with the actions complained of. These actions involve the activities of real estate brokers, tax advisors, customs brokers, life insurance consultants, notaries public, insurance adjustors and other people whose ordinary sphere of activities impinges to some extent on that which we are listed to engage in.

The most numerous complaints have to do with the activities of the real estate people. Their activities seem to be uniform in connection with the drafting of legal instruments. The real estate houses, from the larger ones to the smaller ones in the country, have for years, to such an extent that they now claim they have preempted the right, engaged in the drafting of deeds, contracts and leases, not to say earnest receipts in connection with transactions which are currently being closed by them. A number of conferences have been had with the representatives of the state and local boards, which resulted in the argument on their part that, first, their practice was not engaging in the practice of law, and as a secondary position that if it were it had been so held by practice and sanctified by time and the leaving off of it would so disrupt their relationship with their customers, who were also clients of lawyers, that no one could well afford to interfere with the practice. Endeavors were made to obtain a consent on the part of the real estate people acting through state and local associations to enter into what is called the "Memphis Agreement," which, by the way, has been approved by the National Real Estate Board, which permits the real estate people to do nothing in connection with the drafting of closing instruments, other than the execution of earnest money receipts. The consensus of opinion in our committee was that, while the drafting of an earnest money receipt was undoubtedly the practice of law, yet, almost uniformly, the form employed was that approved by the American Bar Association, and that to cut away from them that portion of their practice would be too damaging, too destructive and not practical. But they would not go for the "Memphis Agreement." They would not go for anything. And so the committee felt that it could not go after the little fellow and let the big man continue in this practice; that the best way to get an adjudication on the subject was to have the question of the right of real estate people to engage in this kind of practice to be determined in a declaratory judgment proceeding in which the respondent would be, if legally possible, the State Real Estate Associa-

tion, so as to take the onus off of any particular real estate dealer, because they are all engaging in this practice. We decided that was the way to have it once and for all finally determined. But even then there was considerable dispute, considerable argument in the committee, and if you will discuss the thing with your fellow associates at the Bar you will find that one lawyer will feel that the average real estate man is as well able to draw a deed as the average lawyer; that some real estate offices will make a better job of the drafting of those instruments. Some other lawyers take the position that we should not interfere with the practice which has in times past brought revenue to the lawyers.

Well, of course, that idea overlooks the fact that our job is to protect the public; that we are looking at this from a public spirited, altruistic, and not a personal, selfish standpoint, but this question is one which is fraught with differences of opinion among the lawyers. And the lawyers in the smaller towns in the country, who are constantly up against this practice, who do not deal in policies of title insurance, a substantial part of whose business is the closing of real estate transactions, take an entirely different view of the matter than does the lawyer in the metropolitan areas, who is not too anxious to handle this kind of a deal anyway; hasn't examined an abstract in the 20 years he has practiced law and deals in policies of title insurance largely in handling those matters.

Now, all of these phases of the matter that I have discussed were taken up with the Board of Governors several months ago. The Board of Governors has authorized our committee to proceed in the court in the manner in which the committee thinks proper to have the question determined. The complaint has been drafted, perhaps not yet in final form, but you should look forward shortly to such an action being started and at least that question being determined.

Now, a word about the general work which the committee has been doing. Mr. Riese's work has included processing of reports and complaints received, presenting these to the committee for determination as to action to be taken. Examples of the complaints and reports include those mentioned with respect to real estate brokers, three cases involving country banks and saving and loan associations, which after Mr. Riese's investigation resulted in written assurance from those concerns that the practice wouldn't be repeated; three collection company cases which are still pending and an adjustor whose activities are receiving the action of the prosecuting attorney; the business advisor who

after investigation and interview went out of business and agreed in writing not to repeat his practice; a lawyer from another state who is practicing law here without being admitted and discontinued his practice. His work upon the problem of real estate brokers has consumed more time than any other subject, as it has included not only the reports of unauthorized practice, some 35 in number, but the survey of other bar associations, and detailed briefing and has resulted in the preparation of a complaint for the proposed action to determine the question.

It is our opinion, and I am reading from the committee's report, "That this work and Mr. Riese's work should continue if the work of the committee is to be effectively pursued." The time necessarily spent in handling the work is more than a lawyer can be expected to devote to it without some compensation. This is particularly true if the committee follows through on the proposed court actions. After working as a member of this committee and observing the public lack of information and its misinformation upon the work of the lawyers it becomes evident that the Bar must do more along the line of public information. Our proposed court action will no doubt receive some publicity and will probably be somewhat deterrent to other practitioners. In addition to those involved the need of public information goes further. We must not only seek out and eliminate the activities of the unauthorized practitioner himself, but we must also give to the man who needs legal service at least some idea of what constitutes legal services and forewarn him to some extent of the dangers of availing himself of the unlicensed and unskilled practitioner. The average victim doesn't realize, until he has suffered by his loss, that he should have gone to a lawyer instead of to a notary public or real estate man or business advisor or customs broker who may draw for him his preferred marine mortgage.

It is, therefore, with the foregoing in mind that an active public information program by the State Bar Association is urged—not an advertising program but a program of information so planned that the public will understand that it is for the public's benefit.

### **Report on Committee for Selection of Judges**

MR. HENRY ELLIOT, Chairman. Mr. Chairman, ladies and gentlemen of the convention. A few of my friends have half humorously, I hope, charged me with having, by artful and persuasive words, seduced this honorable body a year ago at Spokane. For that reason I deemed