

Washington Law Review

Volume 24
Number 4 *Annual Meeting of the Washington
State Bar Association*

11-1-1949

Report of Committee on Reducing the Volume of Published Opinions

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Recommended Citation

John Rupp, State Bar Journal, *Report of Committee on Reducing the Volume of Published Opinions*, 24 Wash. L. Rev. & St. B.J. 379 (1949).

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excited about it, especially as Mr. Spence, himself, is the chairman of that committee and could easily take it out of the Committee and get it on the floor, if it were thought desirable.

It will not come before this Congress, but it has been thought by the Governors to be worthy of your attention because it probably marks a high-water effort in the direction of controlled economy during peacetime. It is a very marked indication of that attitude of disregard for the Constitution which is, unfortunately, so common in our national capital. Our Committee has disapproved the bill and recommends that you do likewise if you want to take action.

If you do, you may see fit to go on record and instruct our representatives in Congress accordingly

(EDITOR'S NOTE: *A motion was made that the Washington State Bar Association go on record as opposing the Spence Bill, and several members of the Association spoke for and against this action. It was finally decided to lay the motion on the table.*)

REPORT OF COMMITTEE ON REDUCING THE VOLUME
OF PUBLISHED OPINIONS

BY JOHN RUPP

Mr. President and gentlemen, I am sorry that the report was not completed in time to be published even in agate type, but "those is the fact." So I am going to read the report and it must perforce be an interim report. But I am going to read it now, at any rate.

Under the common law system of jurisprudence, the decided cases are the primary tools and source material with which the Bench and Bar work in solving the problems of the public. The tremendous bulk of that source material in America and the great size of the annual accretions to it have caused serious concern to lawyers and judges in this country for many years. Particularly during the past twenty years many writers and several committees of various bar associations have published comments and reports on the subject. The suggested solutions vary but all agree that the problem is a very real one and that unless some solution be found, our legal system—like a man suffering from a lung disease—may drown in its own secretion. Being aware of the problem and of the fact that it besets this state, as well as all of the United States, your

President and Board of Governors have appointed this Committee to study the matter and make recommendations.

The Committee was appointed, consisting of the following members: John M. Davis, Lowell P. Michelwait, George H. Revelle, George B. Powell, Harold S. Shefelman, Dewitt Williams, and myself, as chairman.

The Committee was appointed, however, only about forty days ago and it does not feel that it is in a position to make final recommendations at this Annual Meeting. The problem is a difficult one and requires considerable study, as well as consultation with the courts, with lawyers, the law book publishers, and perhaps, the Legislature.

While the Committee is unwilling to present any final recommendations at this time, it desires to express certain preliminary thoughts on the subject. The present immense bulk of published legal material is not wholly the activities of the people through their courts. The mushroom growth in the past fifteen years of what is called "administrative law" has accounted and continues to account for its share of published orders, decisions, glosses, and opinions of all sorts of federal and state administrative and quasi-judicial bodies. To this we have to add the output of the legislatures, the textwriters, compilers of digests, the encyclopedias, the annotations, the loose-leaf services and the law reviews.

Now, looking at the courts alone, however, and I take it that is our function at this time, we find that last year the opinions of American state and federal courts as published in the tall volumes of the National Reporter System, copyrighted in 1948, showed seventy-four volumes and covered a total of 72,495 pages. Now, that's a vast annual addition to the law libraries and it is an expensive matter both in money and in storage space. Most important and most costly is the fact that it makes the task of finding the law more difficult, less certain, more time consuming every year.

Manifestly, the reasons for this volume of published opinions are two—the number of opinions and the lengths of opinion. An additional reason for the number of books in a library is that of duplication of publication. Practically all opinions are published in two separate reports; some appear in three or four.

With reference to the situation in the state of Washington, your Committee is not now prepared to say whether the volume of the

opinions of our Supreme Court is unnecessarily long. The whole set of Washington Reports occupies 233 volumes, some forty linear feet of shelf space. The volumes published in the past ten years occupy about four feet of shelf. We know, however, that the opinions in the first volume of the reports average only five pages in length while those in the last published volume—and that is 30 Washington 2nd—average 11.7 pages, with each page in the latter volume containing substantially more words than the pages of the earlier format.

The most common suggestion for reducing the number of both sides of published opinions is three. The first is to cut down the number of appealed cases by such devices as increasing the jurisdictional amount on appeal or by making the granting of an appeal discretionary with the Appellate Court. As to whether either of these devices is appropriate or advisable in this state, your Committee expresses no opinion. The second is to employ the device of unpublished opinions in cases where the court considers that the case involves only settled points of law and no unusual fact. Under this system a full opinion is written and furnished to the litigant, but it is not published in the report. And the third proposal is to write and publish only short memorandum opinions in the situations similar to the second situation just described.

Now in connection with these last two suggestions it has been said in this state that Article IV, Section 2 of the state Constitution, militates against these devices. That section relates to the Supreme Court and the portion of it that is pertinent here reads as follows: "In the determination of causes, all decisions of the Court shall be given in writing and the grounds of the decision shall be stated."

Your Committee is of the opinion that this section appears not to prohibit short memorandum opinions in appropriate cases nor to require that all opinions be published, although it does require that they be written. Your Committee feels, however, that the question of whether or not a case is unimportant for the future is a very difficult and delicate one and the Committee is unwilling at this time to recommend the adoption of either of these devices in this state, although it believes that there are in fact, many cases in our published reports that add nothing but bulk to the body of our case law

Now, probably, the most common complaint in this state on this whole subject of the volume of the law reports is that the opinions of our courts are too long. Now if this be true in fact, it is a serious complaint—for an overlong opinion not only fills unneeded physical space but it tends to obscure the law and make understanding difficult. Your Committee feels that this is a complaint which it is easy to make and which is difficult to refute and that generally no one can say that an opinion is too long unless he is familiar with the case. Therefore, your Committee is unwilling to express any views at this time.

While some opinions appear to be demonstrably verbose and even argumentative where they ought to be expository, we feel that the court should not be criticized on this score until a factual study is made. We feel that the courts should be made, however, aware of this current of criticism, that a concentrated effort should be made by all judges towards brevity in opinion without, however, any sacrifice of clarity or proper exposition of the law. We realize that that is a big order.

The same thought applies to dissenting opinions. We feel, too, that the Bar should not forget that the cases are moulded by the lawyers and that a clearly presented case is more likely to result in a clear and concise opinion than is a case which is clumsily briefed.

Finally, and on the question of duplication of reports, we note that all of the opinions of our court are published twice—once in the official Washington Reports and once in the Pacific Reporter, a unit of the National Reporter System. It has been suggested by some that the official report should be abolished and that the entire job should be done by the National Reporter System, just as it handles the reporting for the federal court. Your Committee expresses no opinion on this matter at this time other than that the suggestion is worthy of further study.

Now, these are points that I think ought to be brought to the attention of the lawyers and the recommendation of the Committee, therefore, is as follows: "That your Committee recommends that this Committee, or one similar to it, be continued in existence to study the situation further and to report to the Association or to the Board of Governors with recommendations in the future."

And to get that matter before you, Mr. President, I move that that recommendation be adopted.