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## Report of Advisory Committee on the Code

Ben C. Grosscup

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award to an outstanding graduate each year as the "Best Citizen" of the class who exemplifies above all others the teachings of Americanism during his or her attendance at school. Work with the American Legion on its well established oratorical and essay contests.

3. Sponsor local bar programs for the observance of National holidays and Americanism events, including Washington and Lincoln birthdays, "Citizenship Week," "I Am an American Day," and such other important days.

4. Cooperate with public and parochial schools in observing important patriotic and Americanism affairs. Present copies of American Constitution, Bill of Rights and other documents at these ceremonies.

5. Honor a prominent local man or woman annually for contributing most to the advancement of Americanism and Citizenship responsibility in the community. Award to be in form of plaque, citation or framed scroll.

6. Work with local groups interested in the education and naturalization of aliens. Participate in naturalization proceedings in the courts.

7. Encourage wider acquaintance in the high school students with county government and our courts.

The Committee realizes these projects can not all be accomplished at once—that it is a slow process to activate our Bar along these lines. And furthermore, that the objectives must be accomplished on the local level.

With that thought in mind, most of the local bar associations have appointed chairmen of the local committees and they are working to the end that the citizen shall definitely be cognizant of his rights and his duties.

#### REPORT OF ADVISORY COMMITTEE ON THE CODE

BY BEN C. GROSSCUP

The Report of Advisory Committee on the Code is as follows:

Under date of November 21, 1950, R. V. Welts, President, Washington State Bar Association, on behalf of the Board of Governors, directed a communication to the chairman of your Committee, which communication confirmed the appointment of members and outlined the desired functions, duties and objectives.

The Committee held its first meeting December 8, 1950, at which meeting it thoroughly considered the Code problem and prepared a

report which was filed with the Board of Governors, Washington State Bar Association. Request was made that a copy thereof should be furnished each member of the Bar.

On January 16, 1951, your Committee's chairman was requested to appear before the Board of Governors for the purpose of discussing the Committee's report of December 8, 1950, and the recommendations therein contained. As a result of said meeting, the Board of Governors accepted the Committee's report and ordered the same distributed to the Bar as recommended. Said report of December 8, 1950 was printed in full in the January issue of the Washington State Bar News.

Subsequently and during the then current session of the Washington State Legislature, a representative of your Committee contacted and conferred with the chairman of the Senate and House Judiciary Committees and other interested members of the Legislature.

The approach at all of these conferences was advisory and confined to suggestions. The problem was thoroughly discussed and a form of legislation was suggested. During the course of these frequent meetings, the principal point stressed was that the legislation should be so drawn that the Code, when produced, would be an accurate statement of all legislation of a general and permanent nature enacted by the Legislature of the state of Washington. The area for agreement was limited by resolution of the Legislature in its opening days prescribing and setting forth a dual reference for all amendatory bills introduced; namely, that the reference therein should be to Revised Code of Washington (RCW) (enacted by the Special Session in 1950), and the particular chapter of the Session Law from which the RCW section was derived. The effect of this resolution was to make RCW, insofar as it was amended, not *prima facie* the law, but the law.

A representative of your Committee also attended meetings between publishers and members of the Legislature, at which meetings, the problem of publishing a temporary unannotated edition of the Revised Code of Washington was discussed, which would include therein all statutes of the State of Washington of a general and permanent nature. Likewise, these discussions extended to the problems involved in printing and publishing of a permanent annotated code, and the procedures necessary therefor. Towards the end of the legislature, and after many visits to Olympia, Messrs. Powell, Gallagher

& Paulsen introduced House Bill 532, which bill had for its purpose the printing of an unannotated edition of the Revised Code of Washington. At about the same time, the Judiciary Committee of the House introduced substitute House Bill No. 575, providing for the establishment of a Permanent Statute Law Committee. After the introduction of these bills, a representative of your Committee, working in conjunction with Mr. Malloy, the Bar Association's legislative representative, discussed the bills with Senate and House Judiciary Committee members for the purpose of clarification, and in such interest, suggested amendments to each of the bills. The amendments suggested would have, in the opinion of the chairman of your committee, permitted a cooperative functioning of the Committee on the temporary publishing of the revised code and the Permanent State Law Committee to the end that all errors in revisers' restatement as contained in RCW, as well as error resulting from omission, or misplacement could have been corrected. Such a course of procedure would have permitted the publishing of a code containing the accurate statement of enactments of the Legislature of the State of Washington of a general and permanent nature as were in force at the time of publication.

This phase of the code problem was likewise discussed with a publisher. It became apparent, at or about this time, that the forces desiring the printing of a temporary code were unwilling to invest the time and expense required to assure the accuracy of statement of the law as enacted by the legislature and as desired by your Committee. However, enough of the suggestions made to the Judiciary Committee were ultimately enacted into the respective bills so that, in our opinion, the cooperation desired would have been possible.

Immediately following the close of the regular session of the Legislature, your chairman met with the Temporary Code Committee consisting of Smith Troy, Attorney General; Mark Wight, State Law Librarian; Corwin Philip Shank, Senate Member; and Arthur R. Paulsen, House Member, for the purpose of explaining how, in his opinion, that committee and the Statute Law Committee might function so as to produce an accurate and acceptable code. This subject was further discussed at the joint meeting of the committees on March 30, 1951. However, it later developed that the Temporary Code Committee was of the opinion that its authority extended only to the printing of RCW, as adopted by the legislature, and to incor-

porate therein the 1950 supplement to RCW, including the legislative enactments at the 1951 session.

Several conferences were held in an attempt to clarify this situation. However, at the present writing, your Committee is advised that RCW, as enacted by the legislature, will be printed in unannotated form, substantially in the form enacted except for changes and additions made necessary by subsequent legislative enactments.

This Committee is advised that the Temporary Code Publishing Committee has furnished the State Bar News with a release generally describing the format of the code which they propose to print and issue. From further information obtained, it would appear that the first volume will not be ready for distribution before September, and that the Committee has not yet decided what index, if any, the Temporary Code shall contain, and also has not decided as to whether or not the index will be distributed with the first volume or at some later and subsequent date.

Your Committee also took steps to have the Honorable Arthur B. Langlie advised as to the import of the two bills enacted by the legislature. It also has made periodic reports to the Board of Governors, and this report is intended to be only a summary thereof.

Your Committee does not have before it any definite information which it would consider warrants or requires any change of its views as expressed in its December 8, 1950 report.

Your Committee wishes to call to the attention of the Bar of the State of Washington, in connection with this matter, the following:

1. It received two written communications on the subject, one from an individual lawyer, and one from the Whatcom County Bar Association.
2. Your committee chairman was advised repeatedly by the Judicial Committees of the Legislature that they had received no complaints concerning RCW or any other formal communications except general statements that an immediate publication of a code was desired.

The failure of the Bar to show interest in the presentment and distribution of an accurate and complete code was a serious handicap to our suggestive efforts. Your Committee wishes to recognize the activity of Mr. Norris of Bellingham who rendered valuable assistance to members of this committee and who also submitted samples of a proposed code to the appropriate committees of the legislature.

The Permanent Statutory Law Committee met March 30, 1951, at Olympia. Mr. Paulsen of Tacoma, Chairman of the House Judiciary Committee, was chosen chairman, and Mr. Mark Wight, Law Librarian, secretary. No subsequent meetings of this committee have been held. The other members are Charles T. Donworth, representing the Supreme Court; Bernard J. Gallagher, representing the Legislative Council; Corwin Philip Shank, Chairman Senate Judiciary Committee; Ben C. Grosscup, representing the Washington State Bar Association, and E. W. Anderson, Member at Large, appointed by the Governor.

On the question of the Temporary Code Publishing Committee, I am not a member of that committee, but my association with the other two committees gave me certain information. Certain of that information has been published in the *Bar News*.

I am advised that Mr. Williams, who is acting as codifier, and incidentally who is being very energetic and doing as good a job as could be done in the time allotted, feels that he has now completely checked all titles to the point that Volume 1, which contains the first thirteen titles of the Code of Procedure, will be released in the neighborhood of October 15. The balance of from eight to ten volumes will follow thereafter in rapid succession.

The first volume will not contain a comprehensive index but merely a short title index. The comprehensive index and the cross reference tables will be in the last volume, which will probably not be received until sometime around the first of the year.

This work—in talking with Mr. Williams several times—is based squarely on RCW which was adopted by the legislature by reference at its last regular session. The additions to it are recent enactments, and in certain cases glaring errors in placement of material have been corrected or reshuffled, you might say, and put in their proper place. However, there has been considerable doubt expressed as to that and I asked Mr. Williams particularly about corrections having been made. He said that I might state that the code as published will be substantially as passed by reference. This is by way of information.

I will now pass to the Statute Law Committee which I have had—I won't say the pleasure—but the interesting experience of representing this Association for the last few months as its Bar representative. This Committee consists, as you know of seven members: the chairman of the House Judiciary Committee, and a member from the

Legislative Council, a lawyer appointed at large by the Governor, a lawyer appointed by the Bar Association, the Law Librarian, and a member designated by the Supreme Court.

Unfortunately, we have not as yet been able to have a full meeting. We have had what you might call active quorum meetings, three in number, at the first of which we organized. Mr. Paulsen of Tacoma was elected chairman and Mark Wight as secretary. In that meeting we sat in with the members of the Temporary Code Publishing Committee on the publication of the specifications. At this point I might state that this edition will be what is known as a congressional loose leaf binder set, published in sections and so published that it may be brought up to date or changed as the case may be by the addition of pages but without such pressure that it is a ring bind and they won't come out. It will be a little bit larger size than you are used to, and I think of better type. That was all the first meeting accomplished, as far as our Committee is concerned.

The second meeting was held to discuss questions of policy. At that meeting it was decided that the codifier provided for under the act would have little if anything to do until the temporary publication was off the press or at least released by the other committees. However, we decided, as you will have noted, to attempt to find a codifier.

Gentlemen, to date we have had one application. It is the idea of the Committee that this is a job, and a job that will be adequately compensated. Therefore, I urge you to publicize this matter in your communities, or wherever you can, and see if at our next meeting, which will be the latter part of the month, we haven't got some names before us to consider.

The duty of that codifier is set out in Chapter 157. I won't go into it here. The Committee at that time voted to meet at this convention and discuss its questions of policy. Four members showed up, one of them who disqualified himself from voting by reason of his office on the supreme court. The result therefore was that the policy and its desire for apparent action was deferred until the last of the month. I will come back to that. However, we did establish that much, and it is a start, so that those who have suggestions and want information and have complaints may file them. They should be sent to the secretary at the law library in Olympia. If you have corrections that you wish to make and submit, be sure that they are documented by reference so that they may be studied readily.

Coming to the question of policy, I believe this Bar is extremely interested in that. The legislature passed the code by reference. As I read the Chapter 157, the duty is imposed upon the Statute Law Committee and its codifier to consolidate into that code all the laws of a permanent nature which were heretofore or which have been heretofore or may hereafter be enacted. The various ten to fifteen subsections, in my opinion, permit the restoration of the statutory wording where it may have been changed. In my opinion, it does not permit the changing of anything which might be argued is not a substantive change.

Those questions will have to be determined, under the Act, by the Legislature. However, I believe it is most important to this Bar to express themselves so that the Committee may be guided to some extent in directing their policy, and that we not have to wait for approximately two years to put in your hands the correct statutory law as enacted by the Legislature in those cases where RCW does not at present contain it. There are many, many changes; many, many ideas of editing which will be found in RCW.

The approach of RCW two years ago and previously seemed to be the approach that revising required modernization, bringing the statutory law up to date. That work was done in some cases by men of ability, but they worked in fields in which they were not entirely familiar. It has been designed to read as a book and they have attempted to eliminate and revise the legislative language where it seemed cumbersome. Where a section appeared to the men to properly be at the head of a chapter instead of at the end of it, it was moved around. Provisos in virtually all cases were removed or eliminated and direct statements made.

I just state these few things to you so, Gentlemen, when you get this volume you don't go into court relying on it without checking against it. I am recalled to my early studies of a leading case which arose here at Yakima, where the predecessors of this Association brooked an attorney and disbarred him, if you please, because he relied on the written word of the code and did not go to the decisions and the supplementary matter. It was a case of a land patent which was mortgaged. They said that he should have known that that was an encumbrance, the statute notwithstanding, and so he spent several years on the breaks. So, don't let us get caught by that search.

By the same token, there is much of this code which will be right

and which will be accurate. I can't say that it is no good, but it surely deserves extreme caution. I am reminded of the remark that was attributed to Tracy Griffin about the advance sheets. The only trouble with that work is that the word "temporary" has been left off the cover.

It will be a nice volume. You will enjoy having it come. You will have to pay between sixty and seventy-five dollars, whatever it is. Our Committee hopes in a short while after we get started to be feeding you the permanent code pages.

In closing, I wish to make this remark: The statutory law of the state is the highway which must be used by lawyers to direct or guide the destinies of their clients. Are we lawyers willing to have non-legislative obstacles, barriers, placed on that highway, non-action by the Bar? By that I mean not sending in your comments and not taking part in this is bad. Incidentally, I might say that in my service on this committee of the Bar since after the last meeting, I received two communications—one from the Whatcom County Bar Association, and one from a lawyer in the Mount Vernon area—whose inquiries were: "What sort of a new boondoggle was this?" That is the extent of the contact that has come to me. I have searched others out. That cannot go on. A don't care attitude, an appeasement attitude, on subjects such as this is, a subject upon which your livelihood is based, it seems to me, would be a violation of our respective oaths. We have taken an oath to support and defend the Constitution of the state of Washington and of the United States, and impliedly to support and defend the laws of the state. We are, therefore, placed in a position of having to go into court with the code in one hand and the section laws in the other and argue to the court: "It says this here and this is what it means."

In short, gentlemen, we have an obligation of trust to the public. We were here yesterday and heard a great deal on public relations. What are you going to say to your client when you go into court and find that the law upon which you have based your case is not the law; it is only prima facie the law? I ask you that question. What are you going to say to him when you have lost your case? I might paraphrase there. I looked up one section in the revenue act. It took me three and a half hours to cross run it, to settle the problem.

I say these things because I want you through your various channels to express your views through your new committees of the bar

which will be presently announced and with which I will work, what your idea of the policy is. Are we going to be able to not change, alter or amend the statute, or are we going to be able to start out to not publish the statutory law and the statutes as enacted by the legislature?

There is a difference of opinion in the Statutory Law Committee. Some of them say we cannot do that, although this code was enacted by reference. Some of us say we can. That is the policy that has to be decided. I trust, fellow members of the Bar, that you are deciding, each and every one of you, that the hour has arrived in which you must get up. You must take action to save for the people of this state the laws of a general and permanent nature in the form that they were enacted by the Legislature.

#### REPORT OF COMMITTEE ON UNAUTHORIZED PRACTICE OF LAW

BY ALFRED H. LUNDIN

Now, this matter of the unauthorized practice of law is a matter for the protection of the public from the incompetent and the unqualified. It is not a committee that acts to see that the lawyers maintain and keep their business. Some people seem to think that this is the idea. It isn't. A lawyer's business has been decreasing in the forty-five years I have been around here. I have seen things taken away from the lawyers. But that is not the purpose of this Committee to remedy that situation, but rather to attempt to protect the public from the incompetent and unqualified.

Now, in order that this attempt be more universal, the policy of the Committee this year—and we have had several meetings all over the state—is to have local associations appoint unauthorized law committees, and we have been advised that the bar associations of Lewis, Pierce, Whitman and Yakima Counties, and the Seattle Bar Association have appointed such committees. There may be others of which we haven't been advised.

One of the efforts of the Committee prior to the present one was a case relative to realtors drawing legal instruments, and that matter was argued in the supreme court last May. It is the case of the Washington State Bar Association against the Washington Association of Realtors. From our standpoint of lawyers, it is a very, very important case and in the course of time that decision will be available.