Washington Law Review

Volume 28
Number 4 *Annual Meeting of the Washington State Bar Association*

11-1-1953

Report of the President

Philip D. Macbride

Report of the President

By Philip D Macbride

It was in January, 1888—65 years ago—that 35 lawyers met at the Territorial Capital in Olympia to form the Washington Bar Association, with Judge Elwood Evans as President. Six years later the second president, John Arthur—some of you remember him—appointed a committee consisting of Thomas Burke, Harold Preston and E. C. Hughes, of Seattle, William C. Jones of Spokane, Charles S. Fogg of Tacoma, and A. R. Coleman of Port Townsend—names illustrious in the history of the bar of this state—to prepare a program and make all arrangements for a banquet and for a "reunion of the Bar of this State," to be held in the Summer.

That first annual summer convention was held in the depths of the "hard times of 1893"—we would now refer to it euphemistically as a depression. Those were the hard times on Puget Sound that Congressman Frank Cushman of Tacoma, made famous throughout the east by saying that he lived on clams so long that his stomach rose and fell with the tide. Those were the hard times during which the treasurer of our association—and I say this with sorrow—left the state for a period of years and in a careless mood took the entire treasury—$171.00—with him for safe keeping.

Nevertheless, in those tough times the keynote of John Arthur's speech was a plea for higher salaries for judges, which, for the Superior Court, at that time, were $1,500.00 per annum. He said. "Our judicial salaries in this state ought to be doubled. It is the duty of the Bar to open the campaign for that patriotic purpose. I am satisfied the Bar of this state is able to perform this task even though, in many cases, it should call for the trepanning process." And he concluded by saying: "With great deference I propose this as one of the purposes to be accomplished by the Washington State Bar Association."

Even in those days lawyers were discussing public relations—and doing very little about it! John Arthur in his eloquent address, called attention to a resolution just adopted by a political convention in Olympia instructing its delegates to oppose the nomination of any lawyer for congress, and he deemed it appropriate to remind the lawyers of our state that they must inculcate in the public mind the noble and inspiring part played by the members of the legal profession

in the establishment of free institutions—ancient and modern. Nor did he gloss over the long standing prejudice against the profession; how lawyers had been reviled as "sons of Zeruiah" by the Puritans in England and had been disqualified from membership in the Colonial Legislature of Massachusetts Bay in 1683.*

Many of the recorded arguments of those early meetings have a familiar ring. A heated controversy between the Bench and Bar was brought into the open when someone proposed that, since the calendar of the Supreme Court was two years behind, a cure might be found by limiting the time permitted for oral argument. The minutes record one speaker as follows: "He was opposed to any change that would restrict unlimited oral argument; the judges were forced to hear them, but when they retired to their chambers, none but they, could tell what they did with the briefs."

By the next day, however, everything seems to have resolved into sweetness and light, for we read:

"The entertainment on the afternoon of the 17th was more than was anticipated. The excursion on the Steamship 'Seahome' provided with a magnificent band of music and refreshments, was a source of amusement and pleasure. During the voyage of three hours on the Sound, about 250 lawyers, including judges of the court, being on a 'common level' and on pleasure bent, passed the flying moments in various ways. The Judiciary showed their aptitude for the light fantastic toe, while the band played and the lawyers 'tapped.' There was no respector of persons. Mirth and joy reigned supreme."

But let not these scattered quotations convey the idea that the meetings of the Washington State Bar were given over to forensics or frivolities. Such an impression would be entirely wrong. One cannot read the old reports without being impressed by the number of carefully prepared papers that were presented and seriously discussed at the annual meetings. Those published addresses are testimonials to the scholarship and the sound legal thinking of the members of our pioneer Bar.

In comparing the problems and activities of lawyers at the turn of

* According to James Truslow Adams "There had always been a few lawyers in the [Massachusetts Bay] colony. Not only were they however, as such, of not the slightest importance, but on the contrary, to be a lawyer was to incur opprobrium. In 1689, for example, in Connecticut, they were included in discriminatory legislation in company with drunkards and keepers of brothels. In 1730, in Rhode Island, a law was enacted excluding them from membership in the legislature. In the same year the number allowed to practice in the courts of New York was limited to eight, although there were 30 in the city, many with extremely bad reputations." The Adams Family, p. 16.

the century with those of today, some basic statistics deserve notice. These were published in the February issue of the American Bar Journal in an article entitled, "Economics of the Legal Profession," by Messrs. Segal and Fei. In 1900 there were, in the United States, 144 lawyers per every 100,000 population, in 1950 there were 141. Thus, despite a great increase in the number of attorneys in the cities, notably Washington, D C., the nationwide proportion—one lawyer for every seven hundred persons—is the same, or indeed a little less, than it was fifty years ago. This is rather astonishing when you consider that during the intervening period, statutory law and the intervention of government in private affairs have been expanded enormously; also that new fields of endeavor have brought into being vocations for an ever increasing number of accountants, estate planners, pension planners, tax consultants, and so forth and so on.

Again, quoting the same source, the statement is made that between 1929 and 1949 physicians' income increased 125%, lawyers' 46%. It's hard for me to believe that. If this refers to average dollar income, members of our profession have not kept abreast with the rising cost of living.

The Survey of the Legal Profession commenced in 1947 by the American Bar Association, of which the article just referred to forms a part, is designed as "a broad study of the functions of lawyers in a free society" and "an honest effort to make a complete audit and report for submission to the American people." This survey is now practically complete and deserves the attention and thoughtful consideration of all American lawyers. If for no other or better reason, self interest should cause all of the members of our ancient profession to support any well directed effort to strengthen and improve the place and standing of the American lawyer in the complex social organization that is America today

Mr. Reginald Heber Smith, Director of the Survey, in an introductory statement published in the July issue of the "Journal," says:

"The legal profession is a public profession. Lawyers are public servants. They are stewards of all the legal rights and obligations of all the citizens."

If we pay heed to the trend of public opinion during the past 20 years, the doctrine as stated requires an affirmative showing on our part that we, engaged in the private practice of the law, are furnishing

to the public our necessary services satisfactorily—better than they could be performed by a socialized bar or in any other way.

Public Relations has been defined as "The art of explaining ourselves to laymen and of explaining laymen to ourselves." The latter half—the explaining to ourselves—I would like to undertake very briefly Critics of a public relations program point out that membership in our association is now compulsory; that they never have advertised and don't want to; let those that believe in advertising pay for it on a voluntary basis. While such complaints are no longer numerous, they deserve attention by way of an affirmative defense.

With modern methods of communication—radio and television added to the press and the screen—pressing, pushing, hammering ideas and visual impressions at the public in a way heretofore undreamed of, we are compelled, in self defense, to correct the impression that the dramatic portrayal of a lawyer—usually as a rascal—is true and typical. To do this we must acquaint the public with the nature of the useful services that we perform, and the collective merits of the profession.

To quote Mr. Thomas Sidlo, Chairman of the American Bar Committee:

"If the legal profession had not chosen to do something about its own public relations . . . the bar by now, might very well have been experiencing the same cold chill that struck medicine. The medical profession was forced to employ herculean efforts to check the attacks of socialized medicine, because of the profession's relative indifference, seemingly, to public opinion. This also explains why public relations has been such a terrifically costly project for medicine. Imagine being obliged to spend a million and a quarter dollars in a single week on newspaper advertising alone, to tell the story of what organized medicine is doing and to combat its detractors, even in the face of the wonderful record of benefaction to mankind."

The public service program of our association has so far depended on the enthusiastic work of a group of younger lawyers who have prepared and published the pamphlets you are familiar with. They have succeeded in producing radio and television programs without sponsors, on the basis of public interest. They have also been able to obtain the publication, without cost, in many of the daily and weekly newspapers throughout the state, of a series of articles on legal questions of general public interest. For the purpose of supplying these articles for the

press, contests with cash prizes have been conducted for the best articles written by members of our State bar. To carry on the important work of this committee your Board of Governors has made provision in the current fiscal year for an increased budget, set at $4,000.00, which is, roughly, 10% of our annual income from dues.

It is a precept of modern business that the foundation of any successful advertising program must be a superior product. I firmly believe that the bar supplies such a product in the studious and skillful work of the office, in the examinations and the arguments of the trial and in the loyal and courageous protection of our clients' rights, but I fear that the recognition of the merit of the product too often is lost and the reputation of our profession tarnished by the unpunished transgressions of a few unscrupulous practitioners.

Judge Phillips, whose address will feature our session tomorrow afternoon, is the co-author of that part of the Survey on "The Conduct of Judges and Lawyers." In reviewing the record, prepared as part of the survey, he says:

"It is also to be hoped that our findings may persuade those responsible for the discipline or disbarment of our erring brethren to wake up to the reality that unwarranted leniency, not justified by the record, is doing a great injustice to the vast majority of the Bar who are honest and competent and who, along with the public and the courts, are adversely affected by the derelictions of less than one-tenth of one percent of the lawyers of the country

"By way of generalization, with respect to the discipline of lawyers, it must be said that the integration of the Bar, whether by statute or by rule of court, has had a profound effect. It is not so much the fact that this new system has resulted in a substantial increase in the volume of such proceedings in the states having an integrated Bar; it is rather, that the Bar thus reorganized, is now equipped with adequate housecleaning machinery The public now knows that it has a place to go with its complaints of professional misconduct, and the assurance that the Bar will act upon such complaints. With respect to the Bar itself, integration has lifted the burden in such cases, from the individual lawyer and the voluntary bar association, and has placed that burden on the collective shoulders of every member of the bar in the state."

On our success in this field more than any other will depend the efficacy of our Public Relations program and beyond that the continued

freedom of our profession from the control of Executive or Bureaucratic Government. It is an unpleasant assignment to be called upon to participate in the punishment of another lawyer, but unless we do it ourselves—promptly and adequately—we will presently have others doing the job for us, under far less satisfactory conditions.

In some of our larger communities the burden of hearing and investigating complaints should be more widely distributed. Accordingly, the Board of Governors is recommending to the Supreme Court an amendment of the rules to permit enlargement, when necessary, of the number of members of the Local Administrative Committees.

Again using an analogy from business, if a product is to be advertised it must be readily available to the public. When the American Bar accepts Mr. Smith's theorem that we are engaged in a public service and "are stewards of all the legal rights and obligations of all the citizens" it would appear to follow as a corollary that our profession must be prepared to give attention to the legal requirements of all the public.

Important steps in this direction have already been taken under the auspices of the American Bar Association. Lawyer Referral Services have been used for fifteen years and now number more than eighty; one has recently been established by the Seattle Bar Association. The present rapid influx of new residents into our state and the number of requests to the Association for help in employing a lawyer indicate that a proper statewide referral plan should be developed. These applicants expect to pay a reasonable fee.

For those unable to pay, Legal Aid has been described as "a moral responsibility of the Bar." The acceptance of this concept brings with it the burden of paying the bill, unless we are willing to accept the risks attendant on setting up a government-supported legal staff engaged in private practice.

The question is thus put, in the introduction to one part of the Survey:

"If Legal Aid attorneys receive their salaries from the public treasury, either directly or as staff members of a public bureau, will that, despite its innocent and appealing appearance, be the first step, the entering wedge, leading to socialization of the legal profession?"

The risk is grave and the danger imminent in the opinion of American Bar President Storey, of Judge Phillips, Justice Vanderbilt, and others who have studied the problem. The subject certainly deserves our continuing attention.

Legal Institute has become an adjunct to the peregrinations of your Board of Governors. The value of a program of continuing legal education presented in the various parts of the state is recognized by the Bar, everywhere. These programs have been conducted on a very frugal basis, most of the cost having been borne by the participants. To maintain and improve this service, increased provision has been made in the current budget so as to defray the expenses of speakers, particularly those coming from a distance. It is hoped that the scope of the Institute programs can be broadened as funds are made available.

With the close of the war, the number of applications for admission to the bar rose sharply and now tends to remain fairly constant at about 225 per annum. The painstaking work of the examiners grading papers after each semi-annual examination is presently being performed by three examiners. The increased number of papers necessarily extends the period that must elapse before the results can be announced. We have been most fortunate in obtaining and keeping men of the highest caliber on this Board. It is their suggestion that the work could be better and more quickly accomplished by increasing the number of examiners or by dividing the work among more examiners, and action is being taken accordingly

To protect the public from inferior legal "products"—coming back to that term—or more specifically to protect it from the costly errors and omissions that are the inevitable consequences of efforts by untrained persons to perform legal tasks, your Association endeavors to prevent or effectively discourage unlawful practice. To successfully carry on the important functions of this committee requires, it seems to me, at least two things: first, complete investigation at the local level so that the case presented is substantiated by evidence of serious violation, and trivial complaints are weeded out and, second, sufficient provision in our annual budget to carry through the prosecution of the strongest cases. During the past year your committee and its counsel were able to bring the Realtors' case to a successful conclusion and a declaration of policy has been formulated in keeping with the decision.

In the field of legislation, a well considered program was developed by your committee. The chairmen of the Judiciary Committees in both houses of the legislature gave full cooperation in the introduction and consideration of our bills. Accomplishment was limited by the press of other bills of more general interest, but several measures sponsored by

the Association have been enacted, notably an increase of judicial salaries, an amendment of the Code Revision law establishing a permanent Statute Law Committee, and, by popular vote, the constitutional amendment concerning Judges' retirement.

At the beginning of the year it became apparent that the annual dues of $10 were no longer adequate to carry on the necessary functions of the Association. To provide funds for 1953 the members were asked as a voluntary contribution to pay $15 instead of $10. The fine response was sufficient to meet our needs for this year, and, on behalf of the Board, I want to take this opportunity to thank all of the contributors. By an amendment of the Bar Act the Board of Governors are now authorized to establish dues of $15 per annum for lawyers who have practiced five years or more.*

Since the next business on our agenda is the report of the committees, I will not undertake to review their various activities. Much of the essential, and often tedious work of the Association is accomplished through their efforts. In the formation of the committees, the policy of your Board of Governors, in making annual appointments is to stagger the periods of service so that enough "hold overs" remain on the committee to give continuity to the work but by rotation the "make up" is constantly being changed so as to afford the widest possible participation by all of our members.

In closing this report may I revert to a familiar theme? I have really only had one speech that I have given all the year, and I come back to this theme with some embarrassment. I quote again from the survey:

"Under a government of laws the lives, the fortunes and the freedom of the people are wholly dependent upon the enforcement of their constitutional rights by an independent judiciary and by an independent bar."

For the bar to remain independent it must perform its essential services effectively and in a manner demonstrably better than they could be performed by a public social service. Do we realize that we are almost alone in the world in enjoying the right to engage in the private practice of the law? In the countries constituting the British Commonwealth of Nations and to a lesser degree in some of the Western Euro-

* An interesting comparison of dues paid in various organizations was published a few months ago in "Bench and Bar" magazine of the Minnesota Bar Association. In that state doctors who have practiced five years pay $80 per annum. Members of trade unions pay annual dues ranging from $24 for common laborers to $72 for electrical workers, besides paying substantial initiation fees running as high as $260.

pean countries, the legal fraternity has relative freedom, although we would find it irksome to practice under the restrictions existing in many of those countries today Elsewhere, courts and lawyers alike are under the supervision and control of a Minister of Justice which, of course, is an executive arm of the government, regardless of its form.

Rights and customs that we take for granted, such as the right to engage in both office and court practice, the right to practice in partnership, which was the subject of one of the papers at the institute this morning, the right to have your own office, the right to come and go when you please—even to tell your client where to go when you please —and his corollary right to hire or fire whom he pleases; these things are privilages unknown or unobtainable in most of the world today All these we have, and the right of self government as an integrated bar, besides.

Only by meeting promptly and adequately the responsibilities that these rights place upon our profession and by steadily maintaining a high standard of performance, can we justify our position.

Report of the Committee on Administration of Justice

By John P Garvin

Three major matters were referred to this committee during the year.

First, the matter of an additional federal judge for the Western District of Washington.

Second, the creation of an Eleventh Circuit Court of Appeals consisting of Washington, Oregon, Idaho and Montana and the Territory of Alaska.

Third, the method of selecting of judges, with particular consideration of the Missouri type plan.

In addition to these three matters, the committee considered many matters on its own motion, and matters which were informally suggested to members of the committee.

With reference to an additional federal judge for the Western District of Washington, this committee at its April meeting adopted the following resolution.

"RESOLVED that, on the basis of information before the committee, the committee favors Senate Bill 15 providing for an additional judgeship for the Western District of Washington."