Washington Law Review

Volume 34
Number 4 *Annual Meeting of the Washington State Bar Association*

11-1-1959

Report of the Board of Governors and Address of the President

Thomas L. O'Leary

REPORT OF THE BOARD OF GOVERNORS AND ADDRESS OF THE PRESIDENT

Thomas L. O'Leary

I appreciate the privilege that I have had during the past year of acting as your President. Although work for the Bar Association took considerable of my time, I found it most enjoyable. My labors were made less burdensome and most pleasant by reason of the fact that the members of the Board of Governors with whom I worked were highly efficicient and devoted to the best interests of our Association.

A large part of the work of the Bar Association is necessarily performed by committees. As a whole the committee work was highly satisfactory. I shall not, in this report, discusse the work of all committees, but I shall later on speak briefly of some of the most active committees of the Bar.

I would be remiss in my obligations if I failed to state that the efficiency of our Executive Secretary, Mrs. Ralls, and of the Bar counsel, T. M. Royce, was most devoted, both to the Association and to myself.

During my year as President, I attended the 1958 American Bar Association Convention at Los Angeles, the mid-winter meeting of the American Bar Association at Chicago and the meeting of presidents of the Western State Bar Associations at Salt Lake City. I found that the problems of all of the state bar associations are approximately the same as the problems of the Washington State Bar Association. I also found that the aims of all state bar associations, the purposes that they are attempting to serve, and the objects that they are attempting to accomplish, are approximately identical.

I was somewhat surprised to find that one of the subjects most frequently discussed is the inadequacy of the compensation received by the average lawyer for his services. In that connection, I wish to commend the services now being performed by Charles Horowitz of the Seattle Bar and his committee in their effort to obtain data on that subject. Those of you who have not heretofore mailed to Mr. Horowitz and his committee the information that he has requested from you, should do so at once. I sincerely hope that some good will develop from the gathering of such data and that we, in Washington,

may shortly do something which will effectively result in the improvement of the financial status of lawyers of this state.

Admissions to the Bar. During the year 1959, bar examinations, as usual were held in January and July. The total number of persons taking the bar examinations during the year was 157. Of those taking the examinations, a total of 107 passed and 50 failed. The percentage of those passing is .681.

I was interested in determining how the graduates of the two law schools of the State of Washington compared with the graduates of approved law schools outside the state. I find that 88 graduates of the two Washington law schools, out of a total of 121, passed the examinations. In other words, .727 percent of the graduates of Gonzaga and the University of Washington passed. This, you will note, is about four percent higher than the average of the total number taking the bar examinations.

At the 1958 convention of the American Bar Association, a resolution was adopted on the recommendation of its Committee on Legal Education, that applicants to take bar examinations should be confined to such applicants as were graduates of accredited law schools.

During the year your Board of Governors approved of such recommendation and requested the Supreme Court of the State of Washington to abrogate Rule 2(d) of the rules of admission to practice. Our recommendation provided, however, that such abrogation of the rule would not affect any person that had heretofore filed under the "law clerk" rule. Had the Board's recommendation been accepted, there would have been eliminated, in the State of Washington, the so-called "law clerk" type of admission, with the exception above suggested. In due time, your President received a letter from the Chief Justice of our Supreme Court stating: "A majority of the court voted to retain the rule as it presently appears."

There has been a movement throughout the United States for some years to raise the standards of our profession and it is the thought of your President, and the Board of Governors, that the "law clerk" rule should be eliminated. I recommend that at some appropriate time in the future the matter should again be taken up with our Supreme Court.

During the past year the Board of Governors denied the application of an out-of-state attorney to take the Washington bar examinations on the ground that such attorney had been convicted of a crime in-

volving moral turpitude. The applicant has appealed to the Supreme Court from the Board's decision and the case is now pending before the Supreme Court.

Discipline. In our Association discipline is a function of the Board of Governors. It is a matter of great importance and takes up approximately fifty per cent of the working hours at Board meetings. It is important from every standpoint. Surely it is important insofar as the lawyer involved is concerned and is just as important from the standpoint of the Bar, as the public demands that we keep our membership free from criticism insofar as that is possible. To a large extent the maintenance of discipline in the Bar is necessary in the interest of good public relations.

Complaints against lawyers are first processed by the local administrative committee of the county in which the lawyer practices. A large portion of the complaints are of a trivial nature and are disposed of by the local administrative committees. In the event the local administration committee considers the complaint sufficiently serious, it makes a report to the Board, in which report the nature of the complaint is set forth, together with a statement of what the witnesses testified to before the local administrative committee. All complaints must be in writing and signed by the complainant. This report of the local administrative committee is examined by the Board, and if the Board concludes that a complaint should be prepared and filed, the Bar counsel is given instructions to prepare the complaint, serve the same and proceed with the action. All disciplinary trials are presided over by a member of the Board of Governors, who is selected from a congressional district other than the congressional district in which the attorney concerned resides. The trial tribunal consists of two other attorneys appointed by the Board from the congressional district in which the lawyer resides. In the event that the Board concludes that further investigation is necessary, the Bar counsel is ordered to make such investigation and the matter dismissed or a complaint filed, depending upon the result of the investigation and the resulting action of the Board.

Following the trial, findings of fact and conclusions of law and a judgment are prepared and signed. Each member of the Board thereafter examines the entire trial record, including a statement of facts, and either approves or disapproves the findings, conclusions and judgment proposed by the trial committee. The Board then disposes

of the matter and files the record and recommendations with the Supreme Court. In the Supreme Court the matter is heard in the same manner as any other appeal to that Court.

I am advised by the Bar office that during the year two hundred thirty-six complaints were reported to the office as having been made to local administrative committees. The Board of Governors dismissed six complaints before trial, dismissed one after trial, and recommended disbarment in three cases. Eleven additional cases have been referred for trial, and those eleven cases are still pending. Reprimands have been given by the Board in seven instances during the year. In the Supreme Court at the present time three appeals of disbarment are pending.

Our present rules on discipline are inadequate and frequently fail to take care of factual situations presented to the Board. For five years succeeding Boards have been engaged in the preparation of an entirely new code of rules on discipline, and when I took office I hoped that during my term as President that project would be completed. As you know, such rules must be submitted to and approved by the Supreme Court. The proposed code on discipline has now been completed after five years of study by the Board and has been submitted to the Supreme Court. Those of you who are interested may examine the proposed code on discipline, as it is printed in full in Volume 154, No. 18 of the Washington Decisions, under date of August 28, 1959.

Continuing Legal Education. The Bar Association and the faculty of the Law School of the University of Washington have cooperated during the past year in putting on the Continuing Legal Education program. Our committee was capably chairmanned by Bernice Jonson of the Seattle Bar.

In addition to seminars held at the Law School, four programs were had at each of the following four cities: Seattle, Spokane, Olympia and Yakima. All expenses of the meetings were paid out of fees collected, with a very nice surplus remaining for future use in this work. It is my opinion that Continuing Legal Education is well worthwhile. It is highly recommended by the American Bar Association, and seminar programs are currently had by practically all, if not all, of the State Bar Associations of the United States. It is hoped that in the future other cities may be added to the present list of four.

The new rules governing civil procedure become effective on January 1, 1960. Plans are being made by the Committee on Continuing

Legal Education to have seminars on the new rules in various cities of the State. We hope that such seminars will assist in bringing about an adequate knowledge of the new rules so that they may be effectively and promptly made workable.

I wish to express my personal thanks to all of the lawyers who gave so generously of their time to make these seminars instructive and enjoyable.

Legislative Committee. Much could be said of the work of the Legislative Committee during the past year. J. W. Greenough of Spokane was chairman of the Committee, and Arnold R. Beezer of Seattle was vice chairman.

During the year that the Legislature is in session this committee is a busy one. As has been the practice for many years, a lawyer, full time, has been employed to keep in constant touch with the Legislature during the entire session. Harold A. Pebbles of Olympia was so employed during the last Legislative Session.

Practically all controversial bills reach the floor of the Legislature only during the last two weeks of the session. This gives rise to much confusion and frequently makes it impossible to get meritorious measures out of committee and on the floor. For this reason the Legislative Committee has learned from experience that it is able to endorse or oppose but a very limited number of bills effectively.

During the last Legislative Session the bill that was most vital to lawyers was the bill, which, if passed, would raise our B. and O. tax from one per cent to four per cent. This bill had very influential backing, and its defeat was due to the very efficient work of our Legislative Committee and Mr. Pebbles, the Bar's representative at the Legislature. They, of course, were ably assisted by many members of the Association and particularly by the lawyer members of the Legislature.

Time does not permit a further report on other important committees of the Association. I can report, however, that they all did their work satisfactorily. Their reports will be printed, and all of you who are interested will have the opportunity of examining them.

You will recall that the Board of Governors of the Association in July, 1958, adopted a resolution condemning certain practices in connection with the endorsement of judicial, quasi-judicial and law enforcement candidates for office.

At the Vancouver convention last year, a resolution was adopted by

the Bar requesting the Board of Governors to reconsider its resolution of July, 1958 with respect to this subject.

Pursuant to the request of the Vancouver convention, the Board of Governors did reconsider the matter and referred the subject matter of the resolution to the Ethics Committee of the Bar for study and recommendation and provided that pending completion of such recommendations, said resolution should remain in effect.

The Ethics Committee of the Bar thereafter made a thorough and complete study of the problem and reported back to the Board of Governors. For those who are interested, you will find a complete report of the Ethics Committee in the June-July, 1959 issue of the Washington State Bar News. That report is too lengthy to here permit a complete reading thereof. I believe, however, that it is advisable for me to inform you, in an abbreviated manner, of the action of the Ethics Committee.

1. The Ethics Committee decided that there is no breach of the canons of ethics for lawyers to allow their names to be used in a letter or advertisement endorsing a judicial candidate for office.

2. The Ethics Committee further found that it is ethical for lawyers, in an advertisement, to endorse a candidate for judicial office unless pressure is used to obtain such endorsement. When a lawyer endorses a candidate for judicial office, he should do so freely and "should be prompted from a sincere belief in the higher qualifications of the candidate he seeks to endorse and should not be swayed by personal motives."

3. The Ethics Committee finally recommended that in making such endorsements, a lawyer should be guided by the following five principles: (a) The purpose of the endorsement and its use should be solely to inform and advise the public of the qualifications of the candidate; (b) Permission for public endorsement should be free of undue influence or pressure of any kind—that is, it should be either volunteered by the lawyer or readily and sincerely given in response to an invitation to endorse presented on behalf of, but not by, the candidates; (c) Such publication of endorsement should not include description words such as "distinguished," "capable," "leaders of the bar," etc., but should only carry the description "lawyer or attorney"; (d) Endorsement should not be solicited by the candidate in person; (e) Contributors to finance publication of endorsements or to provide campaign funds should not be solicited by the candidate in person

and the names of contributors of such funds should not be disclosed to the candidate.

Following the receipt of the opinion of the Ethics Committee by the Board of Governors, the Board passed a further resolution adopting as its position the entire opinion of the Ethics Committee without amendment.

The rules of conduct set forth in the report of the Ethics Committee state that "candidates for judicial office who are not as yet judges should adhere to the principles applicable to incumbent judges."

REPORT ON CLIENTS' INDEMNITY FUND

Hilton Gardner

Some years ago the American Bar Association started a study of clients' security funds and appointed a committee known as the Committee on Clients and Security Funds. This committee of the State of Washington had frequently been asked just what is such a fund. Now a clients' security fund is a fund voluntarily established by the bar association for the purpose of reimbursing clients in those few instances in which a lawyer, while the attorney-client relationship existed, has misappropriated his clients' funds.

The American Bar Association committee recommended the establishment of such funds by both state and local bar associations.

At the mid-year meeting of the House of Delegates of the American Bar Association that recommendation was approved. It was done in the belief that the public looks to the bar to keep its own house in order and that when one lawyer misappropriates clients' funds under the conditions which I mentioned, it blackens the reputation of the entire profession.

Now as a matter of fact, most of the rest of the English-speaking world has had these funds for many years. The whole of the British Isles, six of the Canadian provinces, New Zealand, Australia, the Union of South Africa and others have had them in successful operation for a good many years.

The committee of which I am a member and of which Mr. Wesley Mifflin of Seattle was chairman, made a study of these various plans that have been in operation throughout other countries and one that had been adopted by the State Bar Association of Vermont and one that was proposed to be adopted and actually passed the State Bar