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### Annual Meeting; Resolutions; Report of Committee on Uniform System of Numbers for Code of the State of Washington; Report of Committee on Selection of Judges; Report of State Bar Delegate to American Bar Association Meeting

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# STATE BAR JOURNAL

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## ANNUAL MEETING

The 1946 annual meeting of the Washington State Bar Association was held on August 30th and 31st in Spokane under the Presidency of Fred D Metzger of Tacoma and under the friendly and efficient auspices of the Spokane Bar Association

The new officers for the present year are:

- A J O'Connor of Wenatchee, President
- Edward R Taylor of Seattle, Secretary-Treasurer

At the same time and place the Superior Court Judges' Association, with Hon John A Frater of Seattle as president, held its annual meeting Hon Timothy A Paul of Walla Walla was elected president of the Judges' Association for the year 1946-1947

The Bar Association heard the following addresses:

Mr Metzger reported on the business of the Board of Governors during the past year, with particular reference to the admission to practice in this state of attorneys from other states and to the question of integration of the bar by Supreme Court rule Mr Metzger personally recommended two changes in the organization of the Bar Association: first, that the number of members of the Board of Governors be increased to provide representation of more and smaller areas of the state, and, second, that the President of the association be elected from the members of the Board of Governors

Dean Edward L. Turner, of the new University of Washington School of Medicine, spoke on the aims and objectives of that new school, with particular emphasis on medical research

Nat U. Brown of Yakima and Daniel M. Reaugh of Seattle discussed the question whether attorneys not admitted to practice in this state should be permitted regularly to practice in the federal courts and to hold themselves out as doing so

Tracy E. Griffin of Seattle presented a memorial on the late Hon. R. L. Maitland of Vancouver, B. C., Attorney General of British Columbia and an honorary member of the Washington State Bar Association. Mr. Griffin also addressed a luncheon meeting honoring lawyer veterans of World War II (See 21 WASHINGTON LAW REVIEW 181)

Robin V. Welts of Mount Vernon, delegate of the American Bar Association, reported on the mid-year meeting of the House of Delegates. His remarks are printed herein following the last committee report

Lane Summers of Seattle addressed the meeting on the question of the proposed increase of Bar Association dues. His remarks have been published in 32 A. B. A. Journal 678 (October, 1946)

The Association's guest of honor, Hon. A. Reg. MacDougall, of the bar of Vancouver, B. C., addressed a joint meeting of lawyers and judges upon international cooperation, taking for his text the life and international law writings of Grotius; and Hon. Timothy A. Paul discussed the growth and development of the judicial office in this state and spoke in opposition to the suggested state-wide juvenile court system proposed by the 1945 legislature's interim committee

### Committee Reports

We regret that space does not permit publication of more than two of the committee reports presented to the Association. These appear following the list of resolutions. Other committee reports were:

- Report of Special Committee on Publication of Supreme Court Reports, A. A. Hull, Chairman
- Report of Obituary Committee, Charles F. Riddell, Chairman
- Report of Committee on Federal Legislation, L. L. Thompson, Chairman
- Report of Committee on War Readjustment, William R. Eddleman, Chairman
- Report of Legislative Committee, H. Sylvester Garvin, Chairman, with Mary Alvord and Ann Thompson
- Report of Committee on Unauthorized Practice of Law, De Wolfe Emory, Chairman

### Resolutions

Following the report of the Resolutions Committee, James E. Royce, Chairman, the Association adopted the following business resolutions:

#### I

"WHEREAS, a correct, modern and readily usable code of laws of this state is indispensable to orderly government by laws and the proper administration of justice,

BE IT RESOLVED, that the Washington State Bar Association hereby endorses the revised code of Washington as prepared by the statutory

code committee, and urgently recommends to the legislature and the governor the immediate enactment of such code during the 1947 session of the legislature

BE IT FURTHER RESOLVED, that the Washington State Bar Association hereby heartily commends the code committee and its able editorial staff who, by their public-spirited and exacting labors extending over a period of four years, have composed an outstanding accomplishment, and that we also commend the advisory committee of the Washington State Bar Association, which with like public spirit has given so freely of the time and talents of its members in bringing the viewpoint and needs of the practicing lawyer to bear upon this achievement, which in the opinion of this Association is one of the most valuable accomplishments in the history of the State of Washington "

(EDITOR'S NOTE: See Report of Committee on Uniform System of Numbers for Code of State of Washington, *infra* )

## II

RESOLVED, that the Washington State Bar Association respectfully urges upon the Supreme Court of the State of Washington that it adopt and put into effect as soon as feasible the following two recommendations of the Board of Governors of this Association:

First, that the Bar of the State of Washington be integrated by rule of the Supreme Court

Second, that attorneys from other states applying for admission to practice law in the State of Washington, in addition to complying with other present requirements, be further required to submit themselves to and pass a professional examination as to their qualifications "

## III

"RESOLVED, that the Washington State Bar Association approves in principle the so-called Jennings Bill, being House Resolution 6345 in the 79th Congress, 2nd Session, and if a bill effectuating the same result as that contemplated by said Jennings Bill shall be introduced in the next session of the Congress of the United States, the Washington State Bar Association directs its committee on Federal Legislation to take such steps as may be appropriate to effectuate its passage

BE IT FURTHER RESOLVED that, after the elections of November, 1946, when the results thereof shall have become known, said committee shall transmit copies of this resolution to both United States Senators and all the Representatives in Congress from the State of Washington "

## IV

"RESOLVED, that increase of State Bar Association dues to the sum of \$10 00 per year before the first of January, for effect in 1947, is recommended to the Board of Governors "

## V

"WHEREAS, the laws of the State of Washington with reference to the jurisdiction, procedure and practice before the inferior courts, namely justice of the peace and municipal courts have not been progressively revised as have the laws pertaining to the Superior and Supreme Courts, and

WHEREAS, practice before such inferior courts is now confusing and complicated, and

WHEREAS, many laws with reference to such inferior courts are obsolete and should be repealed or amended, and

WHEREAS, attempts in the past sessions of the legislature to bring such procedure to proper codifications have failed because of the problem involved:

NOW THEREFORE, BE IT RESOLVED that the 1947 meeting of the legislature of the State of Washington be and it is hereby requested to adopt necessary laws and resolutions to create a qualified commission charged with the duty of investigating justice court jurisdiction, procedure and practice in the State of Washington, and to report necessary legislation relative thereto at the 1949 session of the legislature "

### **Report of Committee on Uniform System of Numbers for Code of the State of Washington**

Pursuant to enabling authority granted by the 1943 legislature and continued in 1945 a committee on code revision was created consisting of the state law librarian, the law librarian of the University of Washington and the executive secretary of the Judicial Council. This committee was charged with the duty of revising and simplifying the statutes of a general and permanent nature, reconciling conflicting provisions, and eliminating obsolete statutes. It was also charged with the duty to adopt a permanent numbering system for the statutes as revised.

Shortly after the adjournment of the 1943 legislature, preliminary work was begun on this tremendous undertaking. The first task was to assemble, assort and appraise the statutes to be revised. In order to determine what statutes of a general and permanent nature constitute the live law of the state at this time it was necessary to chart the history of every statute enacted from the time of the territorial session of 1854 to the present time. A separate book was made up for each legislative session showing the legislative history of each statute of such session from the date of its enactment down to date. Thus, while the actual editorial work of revision has been done from cards prepared from Remington's Revised Statutes and from Pierce's Code in cases where a statute was omitted from Remington and carried by Pierce, a thorough check of both Remington and Pierce was afforded by these separate books showing independently the legislative history of all acts. Numerous instances were found where live statutes had been, inadvertently, no doubt, omitted from both Remington and Pierce. Instances were also found where repealed or obviously superseded statutes are carried by one or the other publication, or both.

The editorial work of revision has now been completed after many months of arduous effort. There are ninety-one separate titles commencing with "General Provisions - Interpretation" and ending with "Water Rights". A list of the titles will be found in the appendix attached hereto as Appendix A.

Perhaps the greatest interest on the part of the legal profession has been in the arrangement of the code material. The consensus favored a topical and alphabetical arrangement, except for the laws dealing with judiciary and judicial procedure, it being felt that the latter should all be kept together as they now are. It might be said that more than thirty groupings of titles were made before one was arrived at which seemed to satisfy the consensus of the bar and also the best to accommodate our laws. The committee finally settled on 91 titles, which compares favorably with the 50 titles of the United States Code, the 127 titles of

the Oregon Code, the 65 titles of the South Dakota Code and North Dakota Code, and the 129 titles of the Arizona Code

The completed revision to be distributed for examination and presented to the legislature will appear in mimeographed form, the committee having acquired a Davidson dual duplicator machine to facilitate the work of preliminary publication

The committee finally determined upon a system of numbering which is a variation of the so-called Yetter system and the Wisconsin decimal system. The first number in a series of three, separated by decimal points, represents the title, the second the chapter and the third the section number. For example, title 2 is the "Courts of Record". The first chapter of that title is "Supreme Court". The first section of the chapter is headed "Jurisdiction". Therefore, that section is numbered "Section 2 01 01". If citation is made merely to the chapter it will be "Chapter 2 01". For the sake of uniformity, in all cases where the chapter or section number is less than ten, a zero is placed ahead of the number.

It should be added that when the completed revision is distributed there will accompany each copy a set of "reviser's notes" for the purpose of facilitating a critical examination of the revision. These notes will be in the form of a tabulated statement, showing the source or derivation of each and every section of the new code, together with an explanatory note indicating what changes, deletions, or omissions, if any, have been made in the original section. They will also show what sections have been omitted and the reasons therefor.

The members of the code commission are Mark H. Wight, state law librarian, Marian G. Gallagher, librarian of the University of Washington, and Alfred J. Schweppe, executive secretary of the Judicial Council. The editorial work has been done under the committee's supervision, by E. W. Anderson, former assistant attorney general, Peter Balkema, Seattle attorney, and L. A. Dwinell, former Longview attorney.

The code commission throughout the period of its existence has kept your committee advised of the progress of its work, and several joint meetings have been held. It has sought and accepted advice and services from the members of the bench and bar to the end that a code might be produced which would find general favor.

In its first report to the Board of Governors in 1941 the code commission said in part, "It is the wish of the commission to prepare the best possible code for the use of the bar." After more than three years of able and painstaking effort its work is practically completed, and an examination of the proposed new code is convincing that its wish has been fulfilled.

It is intended that the revised code be submitted to the 1947 legislature with the request that it be enacted into law at the beginning of the session in order to avoid confusion and to make it possible to fit later enactments into the code. A proposed enabling act for the adoption of the code has been prepared, a copy of which is attached hereto as Appendix B.

It is interesting to note that the Attorney General has given an opinion that no constitutional restriction exists against the right of the legislature to pass the entire code as one act. That opinion is found in *Opinions of Attorney General, 1943-44*, page 264.

It is the opinion of your committee that the adoption of this new code is one of the most important matters that has been presented for your consideration in many years. We believe the Washington State Bar Association should, by resolution, endorse the code without reservation and urge its enactment upon the legislature and the governor.

The lawyers who have done the revising will be in Olympia during the session and will lend valuable aid, but that is not enough. Unless the \$100,000.00 furnished by the taxpayers for this work, and the three years of continuous effort put forth by the code commission, its able lawyers and large staff of employees, are to go for naught, it behooves every member of the bar to do some real missionary work with his local legislators and to urge them to support with their votes the passage of the enabling act for the revised code.

DATED August 30th, 1946

O. D. ANDERSON, Everett, *Chairman*  
 A. A. HULL, Chehalis  
 CLYDE H. BELKNAP, Spokane  
 H. SYLVESTER GARVIN, Seattle  
 PAYNE KARR, Seattle  
 OFELL H. JOHNSON, Seattle  
 ARCHIE E. BLAIR, Tacoma

### Appendix A

#### List of Code Titles of Proposed Revised Code

- 1 General Provisions
  - JUDICIAL
  - 2 Courts of Record
  - 3 Justices of the Peace and Constables
  - 4 Civil Procedure
  - 5 Evidence
  - 6 Enforcement of Judgments
  - 7 Special Proceedings
  - 8 Eminent Domain
  - 9 Crimes and Punishments
  - 10 Criminal Procedure
  - 11 Probate Law and Procedure
  - 12 Justice Courts—Civil Procedure
  - 13 Juvenile Courts and Juvenile Delinquents
- 14 Aeronautics
  - AGRICULTURE
  - 15 Agriculture and Marketing
  - 16 Animals, Brands, Est-ays and Fences
  - 17 Weeds, Rodents and Pests
  - BUSINESSES AND PROFESSIONS
  - 18 Businesses and Professions
  - 19 Business Regulations—Miscellaneous
  - 20 Commission Merchants
  - 21 Securities and Speculative Investments
  - 22 Warehousing and Deposits

## CORPORATIONS, ASSOCIATIONS AND PARTNERSHIPS

- 23 Corporations for Profit
- 24 Non-profit Corporations and Associations
- 25 Partnerships

- 26 Domestic Relations

## EDUCATION

- 27 Libraries, Museums and Historical Societies
- 28 Public Schools and Colleges

- 29 Elections

## FINANCIAL INSTITUTIONS

- 30 Banks and Trust Companies
- 31 Miscellaneous Loan Agencies
- 32 Mutual Savings Banks
- 33 Savings and Loan Associations

## GOVERNMENT

- 34 Administrative Law
- 35 Cities and Towns
- 36 Counties
- 37 Federal Areas and Jurisdiction
- 38 Militia and Military Affairs
- 39 Public Contracts and Indebtedness
- 40 Public Documents, Records and Publications
- 41 Public Employment, Civil Service and Pensions
- 42 Public Officers and Agencies
- 43 State Government—Executive
- 44 State Government—Legislative
- 45 Townships

## HIGHWAYS AND MOTOR VEHICLES

- 46 Motor Vehicles
- 47 State Highways and Toll Bridges

- 48 Insurance

## LABOR

- 49 Labor Regulations
- 50 Unemployment Compensation
- 51 Workmen's Compensation

## LOCAL SERVICE DISTRICTS

- 52 Fire Protection Districts
- 53 Port Districts
- 54 Public Utility Districts
- 55 Sanitary Districts
- 56 Sewer Districts
- 57 Water Districts

## PROPERTY RIGHTS AND INCIDENTS

- 58 Boundaries and Plats
- 59 Landlord and Tenant
- 60 Liens
- 61 Mortgages and Trust Receipts



62	Negotiable Instruments
63	Personal Property
64	Real Property and Conveyances
65	Recording, Registration and Legal Publication
	PUBLIC HEALTH, SAFETY AND WELFARE
66	Alcoholic Beverage Control
67	Athletics, Sports and Entertainment
68	Cemeteries, Morgues and Human Remains
69	Food, Drugs, Cosmetics and Poisons
70	Health and Safety
71	Insane Persons, Feeble-Minded and Inebriates
72	State Institutions
73	Veterans and Veterans' Affairs
74	Welfare and Relief
	PUBLIC RESOURCES
75	Food Fish and Shellfish
76	Forests and Forest Products
77	Game and Game Fish
78	Mines, Minerals and Petroleum
79	Public Lands
	PUBLIC SERVICE
80	Public Utilities
81	Transportation
	TAXATION
82	Excise Taxes
83	Inheritance and Gift Taxes
84	Property Taxes
	WATERS
85	Diking and Drainage
86	Flood Control
87	Irrigation
88	Navigation and Harbor Improvements
89	Reclamation, Conservation and Land Settlement
90	Waterways
91	Water Rights

## Appendix B

### Proposed Statute Adopting Revised Code

AN ACT to revise, consolidate and codify all the laws of the State of Washington of a general and permanent nature and to set them forth under title, chapter, and section headings and numbers and to enact the whole as the "Revised Code of Washington", and declaring an emergency

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

SECTION 1 The ninety-one titles with the chapters and sections and numbering system hereinafter set forth are enacted as and designated the "Revised Code of Washington" This code is intended to embrace in a revised, consolidated and codified form and arrangement, with a numbering of the titles, chapters and sections, all the laws of the state of a general and permanent nature in force on January first, one thousand nine hundred and forty-seven

SEC 2 The contents of this code shall establish prima facie the laws of this state of a general and permanent nature now in force, but nothing herein shall be construed as changing the meaning of any such laws In case of any inconsistency between any of the provisions of this code and the corresponding portions of the laws existing immediately preceding this enactment, such corresponding portions shall control

SEC 3 This act is necessary for the immediate preservation of the public peace, health and safety and for the immediate support of the state government and its existing public institutions and shall take effect immediately

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

Nearly fifteen years ago the Committee on Selection of Judges was created by the State Bar and was charged with the task of securing more cooperation between the state executive and the bar in the selection of appointees to the supreme and superior courts Pursuant to the plan proposed by the committee the governor would appoint no person to such judgeship who did not have the approval of the bar It now seems timely—indeed necessary—to review the experience under the plan followed and to consider the results achieved

Under the State Constitution no person is eligible to the office of judge of the supreme or superior court unless he shall have been admitted to practice in the courts of record in the state and such judges shall be elected by the qualified electors of the state at large or by the qualified electors of the county, respectively

The constitution does not provide the method of nomination Prior to 1907 nominations were made by party conventions With the advent of the direct primary in 1907, the legislature provided for a "Non-Partisan Judicial Ticket" by which nominees were selected by direct primaries regardless of political affiliations The legislature of 1927 continued substantially the same plan in providing for a "Judicial Election Ballot" Since the adoption of these acts the two candidates receiving the highest and the next highest votes for a judicial position in the primary election become the nominees for such position in the following general election

As in other states, the practice of popular election of judges has come in for considerable criticism in the State of Washington Perhaps the most meritorious criticism inherent in the system grows out of the fact that the public generally has little opportunity to observe and evaluate the function and work of the judges It is undoubtedly a fact that most voters express their choice for judicial candidates upon opinion rather than on any direct knowledge of the subject Such results can hardly be avoided unless judicial candidates resort to expensive and highly publicized campaigns To date the public and the bar generally have frowned upon this alternative

Another development not contemplated by the requirement for popular election has come about Experience shows that from two-thirds to three-fourths of the judges of the supreme and superior courts have been elevated to the bench, not by election but by appointment of the executive Under the constitution appointment to fill a vacancy in the office of such judge is made solely by the governor and does not require either the concurrence or the prior approval of any other body

Experience has further shown that a person appointed by the governor enjoys almost certain assurance of re-election on the expiration of

the term for which he was appointed. This has been due to the advantage which he enjoys by virtue of his appointment and the traditional reluctance of lawyers generally to offer themselves as candidates in contested elections. As a result the appointed candidate is seldom opposed for re-election, and as a consequence appointment to the bench has come to be the rule rather than election by popular vote.

It is not the purpose of this committee to attempt to draw invidious comparisons between the judges chosen by popular election or by executive appointment. It is obvious that good men can be and have been chosen by either method. The problem with which we are here concerned is whether the method of selection as set up in the constitution or the somewhat unofficial method which has resulted from executive appointment, is satisfactory as a whole or whether there is a better method by which the personnel of the courts generally can be improved and the administration of justice made more effective.

It was because of a very decided opinion that improvement was needed that this committee was originally authorized by the Bar to seek ways of improving the selection of judges. The plan of cooperation above mentioned was undertaken and each governor was asked to commit himself to a policy of not naming to the bench any lawyer who did not have the approval of the bar as expressed through its committee on judicial selection.

Since that method was put into operation, three men have occupied the office of governor. The committee was able to bring about substantial cooperation from two governors. As a result, during their administrations practically no lawyer was appointed to either the supreme or superior courts who did not have the endorsement of the proper bar committee.

Since the third governor has assumed office he has received the suggestions and approved lists tendered by the committee, but he has been either unwilling or unable to promise or give the same cooperation which his predecessors gave. As a result the committee has received no pledge of policy and the appointments made have generally disregarded the recommendations and endorsements of the committee.

We submit that the plan which the bar has followed and which met with very substantial cooperation upon the part of two governors is sound in principle and has a great deal of merit to recommend it. We believe it is fundamentally sound that no lawyer should be selected as judge who cannot receive the approval or endorsement of at least a majority of the lawyers who practice in his court. No one who is familiar with the legal profession can have any doubt that most lawyers, regardless of the character of their practice, desire able, honest and impartial judges to hear their cases. They are in a better position to observe and measure the fitness of the candidate for judicial positions.

On the other hand it must be admitted frankly, that the plan has certain inherent weaknesses and difficulties in application which in large measure make it impractical and of doubtful value.

In the first place it has no official standing. It has to rest solely upon whole-hearted and voluntary cooperation on the part of the bar and of the executive. It has at times been subjected to sharp attack upon the ground that the executive by pledging himself to such policy is surrendering a duty and responsibility fixed upon him by law.

Secondly, in the event of a vacancy occurring, the governor is either compelled to resort to a list which has been made up and submitted to him a considerable time in advance, or to request a new list to be made up and submitted for his consideration. In the meantime, he is being subjected to strong and insistent pressure to name someone without the recommendation or endorsement of the bar.

Thirdly, the plan is even subject to abuse by the governor who, under the influence of political expediency, desires to shift pressure from himself to the committee.

Fourthly, experience has shown that it is not always possible to secure prompt action in obtaining expressions of recommendations and endorsements of candidates, particularly where superior court judgeships are involved. As a result, the governor sometimes has to take action before he can obtain recommendations from the local bar association.

We are of the opinion therefore that experience has demonstrated that no very great improvement of a substantial or permanent nature can be realized in attempting to pursue this plan further.

Speaking realistically, it is obvious to the committee that political and group pressures are such today that more and more it is becoming difficult in this state to keep the bench free from partisan selection and bias. This is evident from the open and unapologetic manner in which partisan endorsement is given both to the election and appointment of judges even though the official policy and practice has been to keep these positions non-partisan. Consequently, the committee has had to give careful and serious consideration to an alternative procedure. In doing so, the present committee has tried to evaluate the real problem involved in the election and appointment of judges; to analyze the inadequacies of the present system; and to propose in its stead a plan in keeping with the character and best traditions of our judicial system and at the same time providing a practical means of exercising intelligent care in the selection of judges but not removing them completely from responsibility to the public through popular vote.

As a result of careful study and research, the committee is of the opinion that the most effective plan is that which has been advocated for years by the American Bar Association Committee on Judicial Selection and Tenure, known as the A B A plan. Under this proposal nominations are made by a judicial commission and the appointment is made by the governor from the list of nominees submitted by the commission. The judicial commission would comprise seven members; three laymen appointed by the governor, three lawyers elected by vote of the members of the bar according to geographical districts within the state, and the Chief Justice of the Supreme Court as the seventh member and ex-officio chairman of the commission.

Whenever a vacancy would occur by reason of expiration of the term, death, retirement, resignation or any other cause, the governor would call upon the judicial commission to select and submit three nominations. The governor would then be required to appoint one of the three nominees to the vacancy. In order to succeed himself, the nominee would be required to file a declaration of candidacy and his name would then go before the voters at the next general election. He would be unopposed on the ballot and the electors would be called upon to vote upon the question, Shall this man be retained as judge? If a majority of the

electors voted adversely, the position would thereupon become vacant and would be filled by appointment of the governor from a new list of three names submitted by the judicial commission

The considerations which have motivated the committee in making this recommendation, including the following: First and foremost, it is predicated upon the thought that a judicial commission can do a better job of selecting qualified lawyers for judicial service. Such a commission has the advantage of knowing the requirements of the position, the character, training, experience and general fitness of the lawyers who would be willing to accept appointment to the bench and would have the time to deliberate, weigh and compare the merits and demerits of the prospective candidates. It can hardly be successfully denied that a much more careful and reliable result would be achieved than by popular election.

Another thing weighing heavily in favor of this plan is that the nominations would probably be as nearly non-partisan as under any system that can be devised. The manner in which the commission is to be constituted practically precludes any possibility of "framing" a commission so as to insure a partisan or factional choice.

Also it would seem to preserve in proper balance the essential features that seem to represent the general policy of the state thus far in the selection of judges as reflected in its constitutional and legislative history. It retains appointment by the governor; it also gives the governor the power to appoint three laymen to sit as members of the commission charged with the duty of selecting the nominees. It promises an effectual method of insuring non-partisan consideration in the nomination of judicial candidates for appointment. Furthermore, it recognizes a factor which undoubtedly plays an unofficial part in every judicial election. We refer to the practice of many voters who consult their own attorney or some other lawyer before voting for judges. This is undoubtedly due to the belief of the average citizen that the practicing lawyer has special opportunity to judge the fitness of such candidates. This factor is incorporated in the proposed plan by admitting to membership on the commission an equal number of lawyers and laymen. This makes it possible to utilize in the judicial commission the special knowledge and appraisal of judicial candidates possessed by the members of the bar, yet by counterbalancing the lawyer members with a like number of lay members any valid claim that the selection of judges is being placed exclusively in the hands of the legal profession, is excluded.

The inclusion of the chief justice as the seventh member and chairman of the commission, seems to be happily suited to giving the commission personal prestige, pertinent knowledge of the prospective candidates from the standpoint of those who administer the judicial system and further assurance that political and factional considerations in the selection of judges will be minimized.

Not to be overlooked but rather to be emphasized is that part of the plan which retains the right of the general public to pass upon the fitness of the judge as manifested after his first appointment. It is fair to point out that this plan will give the electorate the right to correct any serious mistake that may be made by the judicial commission and the governor in the original selection of a judge. Before he can enter upon a new term

he must submit himself to popular vote in a general election. In this election he runs squarely upon the record which he has made as judge. Such an election will generally, if not always, involve only an inexpensive campaign and does not readily lend encouragement to building up anything in the nature of a political machine either for or against a judge.

Various proposals involving the A B A plan or variations of it, are under way in various states. In only one state has it already been adopted and put into effect. Prior to 1940 the state of Missouri had followed the plan of popular election of judges nominated by party conventions and running as the nominees of their respective political organizations. Much dissatisfaction had accumulated over the years with the administration of justice by judges chosen in this manner. As a result Missouri adopted by popular vote in the general election of 1940, an amendment to its constitution setting up a non-partisan judiciary and including nomination by a judicial commission with appointment by the governor from nominations submitted by the commission, and requiring the appointed judge to submit to reelection by popular vote in which he would be the sole candidate running upon the issue as to whether he should be retained on the basis of his record as judge.

In other words the Missouri procedure follows all of the essentials of the A B A plan. Perhaps it is too early to attempt to draw any final judgment upon the experience of the Missouri plan, but it would seem significant to note several things. First, the plan was a clear recognition on the part of the people of Missouri that in order to insure a non-partisan administration of the courts, a method of non-partisan nomination was necessary. It is interesting to note that in the vote on the constitutional amendment in 1940 the plurality that favored the plan was 95,000, and it carried in only twenty-three out of 114 counties in the state. Two years later, a repealing amendment was defeated by a plurality of 173,000 votes. The repealing amendment lost in the city of St. Louis and in 112 out of 114 counties. In the 1944 general election the voters of Missouri again approved the plan by adopting a new and revised constitution including all of the provisions adopted in the 1940 amendment.

Speaking of the Missouri plan, the report of the Special Committee on Judicial Selection and Tenure of the American Bar Association in 1943 says:

"The experience of Missouri under the A B A plan is encouraging indeed. The immediate beneficial results are referred to in the committee's report for 1942 [67 A B A Rep 280 (1942)]. Since then three appointments have been made by the governor from the lists proposed by the nominating commissions each with universal approval of bar and laity. There has been one general election whereat the people under the new method voted for the retention or retirement of the judges without competing candidates. Two supreme court justices, eight circuit court judges and one probate judge were retained without the need of campaigns by them. One circuit court judge was removed, despite a strong campaign by him and his friends for his retention.

"The fact not only that good judges are assured of tenure under the A B A plan, but that an unqualified judge can be removed without too great difficulty, has allayed the fears of many that the non-com-

petitive election method would freeze in office all incumbents regardless of qualifications

"The judge removed ascended the bench first by gubernatorial appointment Under the old elective method he remained in office ten years, despite the fact that he was regarded as a legal lightweight, exhibited prejudice toward some lawyers and in certain classes of cases, resulting in many changes of venue, and made selection of grand juries largely upon a political basis At the first election under the new plan his removal was accomplished The bar association as such did not participate in the campaign The judge was retired through the work of a small committee of lawyers and laymen, which focused attention upon the issues, and at an expenditure not exceeding \$300 00 "

Your committee does not believe and is therefore not urging that the proposed plan will automatically and of itself effect any startling change or reform in the judicial system or in the administration of justice in this state It does believe, however, that the plan, if adopted, will give the bar of the state a rightful part in directing intelligent attention upon the present problems in judicial administration and thereby tend to place the selection of judges upon a more pertinent basis with less likelihood that judicial positions will be bestowed primarily on the basis of political or personal favoritism It has the fundamental merit of placing a good deal of the responsibility in the selection of judges upon the bar and the bench where it would seem to rightfully belong

Your committee has no doubt that while able judges can be and have been chosen under the present system, the same system is open to the indictment that it can and, in at least some instances, has resulted in the unhappy choice of judges who are not well qualified to carry out in an effective manner the manifold responsibilities both of a judicial and administrative nature which rest upon the courts in this state Washington is no longer a sparsely populated, agricultural and frontier area It is undergoing a highly industrialized and cosmopolitan development Our civilization, whether we like it or not, makes it clear that our social, economic and political relationships are growing more complicated day by day The stresses and tensions of this changing way of life bring new and complicated problems to the courts, not only for decision but for administration

Furthermore, the courts and lawyers must constantly take cognizance of the fact that whether we like it or not, time has become of the essence of judicial administration and procedure Without sacrificing care and proper deliberation, our judicial system must keep step with the developing needs of the people under the civilization in which we live and of which we are a part

An independent and effective judicial system is the keystone of the arch of our political structure The bar has both a private and a public interest in maintaining both the place and prestige of the courts It would seem that the next step in the development of our judicial system in this state, would argue for greater care, and non-political discrimination in the selection of our judges to insure as far as possible their removal from partisan or factional control We believe that the proposed plan will aid in achieving that result

Our committee is recommending, therefore, that this convention go on record in favor of the State Bar undertaking a program of education

to the end that responsible groups of citizens may be led to consider the merits of the proposed plan and to support the bar in an effort to have the legislature submit a constitutional amendment putting such a plan into effect Your committee has made such a recommendation to the Board of Governors of the Washington State Bar Association, and at its meeting in the month of May, 1946, the Board of Governors unanimously approved the recommendation of the committee

Respectfully submitted,

LLOYD R SAVAGE  
 PHILIP S BROOKE  
 A H WARD  
 DON M TUNSTALL  
 L B DONLEY  
 WALLACE W MOUNT  
 HENRY ELLIOTT, *Chairman*

(EDITOR'S NOTE: The foregoing report, with its recommendation, was unanimously approved and adopted by the Association )

### **Report of State Bar Delegate to American Bar Association Meeting**

By R V WELTS of Mount Vernon

Mr President, and members of the Association It was my honor and privilege to be chosen as your representative, succeeding Del Cary Smith, as a member of the House of Delegates of the American Bar Association

In making this report, because I am your delegate and you should know of what was done there, I shall tell you the facts, and I wish to make one or two observations in conclusion I am proceeding upon the theory that there are members of this Association who know as little about the functioning of the American Bar Association as I did when chosen as your representative to the House of Delegates The proceedings of this midyear meeting are set forth in detail in the last *Bar Journal* I commend to you the reading of those proceedings, particularly, because it shows the broad lines of endeavor undertaken by the American Bar Association, the very splendid address made by Judge Ransom, the representative of the American Bar Association meeting with those and counselling those who are trying their best to form a lasting peace It indicates that the American Bar Association has a working organization which spreads out into fields tremendously important in life, as well as doing a job of particular service to the component members and the lawyers at large throughout the several states The intensive work of the Association is done through sections As you know, there are sections dealing with all phases of law Incidentally, while some of the younger members and the older may not know it, you can subscribe to the service of those sections, and thereby get much useful information and knowledge of law in the particular field covered In other words the American Bar Association is servicing the efforts of the individual lawyer The charge for that service is very small, only two or three dollars a year You can obtain in your special field, for instance, be it insurance, such reports as will take insurance policies in detail, with a compilation of all the decisions in the United States having to do with interpretation of each word or clause This service



in many fields of law is worth looking into, because it can be extremely helpful. It is available to all of us if we subscribe for it.

The House of Delegates is, so to speak, the governing body of the Association. Broadly, it is composed of two classes of members. One class is comprised of representatives of the Bar Associations of the several states and some of the larger city associations. They are known as Association delegates. In our state your representative is chosen by the Board of Governors, our governing body, to represent the lawyers of the State of Washington. The other group is known as state delegates. Each state has one, elected by those members in the state who belong to the American Bar Association. Generally speaking, those groups compose the House of Delegates. The house, through the action of the state delegates alone, chooses the president of the American Bar Association and the members of its Board of Governors.

I deemed it my duty to see if I could learn what was going on. I conferred closely with our state delegate, Will McLaren, former president of this Association, and a man active in the American Bar Association for many years, having been on its Board of Governors.

Before going to Chicago I understood in a general way that there were two objectives as far as this association is concerned: the potential presidency of the association for the State of Washington, and the convention to be held at Seattle. I soon learned that there was much work to be done if either of those objectives was to be accomplished. I found that the general picture was one whereunder we do have a man from the State of Washington, Frank Holman, generally recognized and qualified—recognized among those from the East, the South, the Midwest—as of the caliber fitted to that office. Of course I learned that there is much politics, jealousy, ambition; but I found that there was one vital thing lacking as far as Frank's immediate potential candidacy was concerned. There is an unwritten understanding that one so chosen should have a background of more experience within the national Association than Frank then possessed, but I did learn that Frank is recognized generally as one who has more than a potential possibility as president of the Association.

As a result of observations, contacts and conferences with Will and Frank, it seemed that our objective was to do what we could to advance those two things, the ultimate candidacy of Frank as president, and a convention in Seattle. It soon became apparent that this could not be done or brought to fulfillment in 1947. As a consequence, I report to you that the effort is being made and will be made to accomplish those two things. I believe that the convention can be had in 1948. Just when we should make our bid for the presidency is, of necessity, an indefinite thing.

Now in fairness and justice to Will McLaren, because of things that have cropped up, I want to say this. The political scene shifted very rapidly back there. I learned that it was sort of understood that the Western spot on the Board of Governors rotates. This time it should go to California. That position for a three-year term was to be filled by election. Each state delegate had a vote. The Association delegates did not. The election is held by the state delegates meeting separately from the House of Delegates. To our amazement, when this matter arose there was a split in California. It was presenting two candidates

The scene shifted rapidly, with the result that substantially to further and hasten Frank's prospects as president of the Association, he became a candidate for that spot on the Board of Governors. Unfortunately, loyal to a prior commitment, Will McLaren had agreed to and did support and place in nomination Lloyd Wright from California, who ultimately was elected. This was a peculiar situation, and the result was one for which there should not be undue criticism. It was one of those things where a prior commitment had been made, a political scene shifted, and difficulties arose. I simply report that as a fact, with no criticism; but out of that experience I say this: In going forward hereafter there must be unanimity of action; we must make no prior commitments which can not be changed to the advantage of the State of Washington. I believe that Will and I are agreed that a successful effort can and will be made on behalf of Frank and the State of Washington to secure the presidency of that Association.

Now, mind you, that is no easy task, because there are men all over the country, men of standing, ambitious for that position. But my personal judgment from my observations there is that we do have a very excellent chance, if we work this situation well, vigorously, and properly, to succeed in having the presidency of the State of Washington in the person of Mr. Holman. I think those two things, from the standpoint of this organization, are the objectives to be accomplished within the American Bar Association.

May I suggest just one further thing, and that is this: There are only about 20 per cent of us, of our boys in the State of Washington, who belong to the American Bar Association. It is a lawyer's organization. We should be alive to the responsibilities and to the opportunities to belong to our own national organization. The doctors, organized as they are, are facing a fight for socialized medicine and we know that is upon us. I urge that we, as lawyers, do something about it, because the next step is socialized law. There are no people quite so individual, quite so hesitant about surrendering that personal initiative and personal right, as lawyers, and as a consequence we don't organize. We feel we are giving up something. We bridged that gap when we established the unified bar in this state, and we have hopes that it will be unified by court rule so it will be permanent.

Let us go on, fellows, and really bridge the gap and pitch into the thing and organize as members of the American Bar Association, one unit preserving the rights of lawyers and performing a service for the public as well. It is a tremendously important organization, and if we are to survive over any long period of time under the plan of private initiative and private enterprise, I feel that it is essential that we awaken, unite, become members of our national Bar Association, and go forward as one unit. Gentlemen, I thank you.

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### BOOKS FOR SALE

Messrs Berkey & Cowan, Radio Central Building, Spokane, wish to sell their Pacific Reporter, including prior California and Montana reports, a complete set of Digests and bookcases