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Report of the President

L. C. Sampson

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L. C. SAMPSON

Pursuant to the law passed by the Legislature of 1939 the Supreme Court adopted rules providing for the integration of the Wyoming State Bar. These rules have been the subject of laudatory comment by other bars and individual enthusiasts of Bar Integration. We have now been operating under these rules since January, 1941.

They specifically provide for an annual meeting in August and designate the purposes for which it is held:

> "Such annual meeting shall be held for: the election of officers, to hear the address of the President, and in general, for the discussion of matters of interest to the State Bar and affecting the administration of justice."

They seem to outline the specific nature of the discussion of this address. With that in view, I am sacrificing other subjects that might be much more interesting. I am merely giving a report of progress and making a few suggestions I think will be for the betterment of the bar and its members.

For the entire period of the war, a proportion of our bar, far in excess of what I am sure would be the average in the country, if not in fact the very highest, fully one-third, was engaged actively in the armed forces. Many others were devoting much time to war activities, of one character and another, all calling for free and useful service without compensation. The Wyoming Bar of approximately 325 members, honorary, retired and active, had fully one-third, or 106 members, in the armed forces for varying lengths of time. Unfortunately two of our members lost their lives in the service, several were seriously injured, and 9 are still in the army, navy, or related activities. Some have chosen to remain and make it a career.

The Bar granted retired licenses, without the payment of annual license fee, to all members while in the active service, and sponsored an order by the Court relieving members who served, a continuing free license until the second August 1st after dischange. This at least shows some appreciation but more is due. I am sure that all returned service men have found a sympathetic appreciation from those who remained at home, who have been willing to do as much as possible to make this felt when the occasion presented. Possibly we have not been as cooperative as we might in extending the privilege of office space, which was almost impossible to obtain when these men were trying to become re-established.

The State Board of Law Examiners, another arm of the Court, did all that it possibly could do to expedite and assist the men who were entering the service to become qualified before entering upon a

line of activity where all of their thoughts and efforts were to be entirely different from the life work they had chosen. Just last month the Board gave examinations to 11 students who were called into the service before they could qualify for examination. Each of these men had spent in excess of 8 years in completing their legal education. There were nine in the graduating class of the law school this June, all veterans, all married, all but one, fathers, and all had spent over 8 years completing their course because of the army service intervening. Their average age was 29½ years. There are probably 10 additional residents of Wyoming attending schools outside the state with quite similar experiences, who will apply for examination before the first of the year. To these men, I feel, as do all Board members, that we owe a special duty to give them an early opportunity to become qualified, if they are able to pass credible examinations.

Beyond these men who started their course of study before the war effort, I feel there is a different problem. The American Law School Review for December, 1946, gives law school enrollment by schools in the fall of 1945 and in the fall of 1946. The total enrollment in 122 schools reporting in the fall of 1945 was 10,752. One hundred and thirty-seven schools reported a total of 38,117 students in the fall of 1946; 20,720 in first-year classes; 10,080 in second-year classes; 4,803 in third-year classes; 1,030 in fourth-year classes; and 1,200 in graduate classes. These figures are incomplete as 41 listed law schools did not report. According to press reports our own law school expects an enrollment of 75 to 90. If they remain in school for the full course, where do they expect to practice? Compare this with the American Medical schools where they limit their enrollments strictly.

Good law schools, and good young lawyers, are essential to the progress and maintenance of a high standard in the legal profession, but we also owe a duty to those in the practice who have been so delayed in getting established. Certain Districts and State Bars years ago adopted a quota system, which was then as it would be now, considered a very un-American approach to a difficult problem. It has always seemed proper to me, that the American Bar should sponsor conferences with the American Association of Law Schools with the object of advising accurately the approximate number of new members the practice can assimilate. The unprecedented number now preparing law for a life career, certainly cannot be absorbed and the Bar continue to maintain the high standard the profession has maintained in the past.

The University of Wyoming Law School has had an enviable record of success with its graduates. I am reliably informed that but one graduate who presented himself for admittance in other states, including practically all of the states, has failed in passing the examination. That in itself shows that a good school is being conducted and its continuance is fully justified. However, there is probably not room

for one-fourth of the present enrollment in the practice in Wyoming. The student who is not showing unusual promise should be advised to change his course of study early in his college career.

An answer to the over crowding problem has not yet been devised, but such drastic action as has been taken by the American Medical profession cannot be recommended.

This Bar sponsored a bill in the last session of the legislature raising the requirements for admission, to graduation from an accredited law school, which bill failed of passage. A similar bill should be reintroduced into each session until passage is secured. Such a bill is in the interest of getting good qualified lawyers, and not selfish in purpose.

This brings up for discussion the success of the Bar in securing the passage into law of bills sponsored in the last session of the legislature. The Legislative Committee, appointed by my predecessor, was continued and functioned with an unusual degree of success. Some 15 separate laws dealing exclusively with practice and procedure were recommended and enacted. They dealt with a variety of subjects but will not be detailed since you know what they are.

While all of these were needed and will be helpful in the practice, Chapter 53 of the Session Laws of 1947, which authorizes the Supreme Court, from time to time, to adopt rules governing practice and procedure in all Courts of this State, is in my opinion of paramount importance.

Heretofore the lawyers have had no right, inherent or otherwise, to make laws. For the most part, laymen make our laws and then complain about their insufficiency and delays. When lawyers have tried to counsel the laymen lawmaker, he has been apt to be treated with suspicion and jealousy. As you are all too well aware the lawyer is only in a very small measure responsible for the deficiencies of our legal procedure. We have in the past been content with meeting during the legislative session and recommending a very limited number of bills for improvement of the practice, always confronted with the threat that if we recommend too many, we might get none. There have been times when virtually none of our bills were passed.

A comprehensive, workable, and sufficient law is now provided. This now places any cause for gripes for delay, inefficiency and gaps in our procedure and practice right in our own laps where everyone admits it should be and for which we have been blamed regardless of fault, or ability to correct the situation. This is where it belongs. It is up to the Bar to meet the challenge promptly and effectively.

The Supreme Court is authorized to appoint an Advisory Committee; your officers in meeting on July 28th had a conference with the Court and asked it to proceed to function under this law. The Board also at that time committed the Wyoming State Bar to pay the

actual expense of this Committee. The Court has in turn requested the Bar to select one member in each Judicial District to serve on the Committee—most districts have already complied with this request and it is hoped all will very soon.

A great responsibility rests with this Committee and the Court. If they fail to improve both the practice and the procedure—we fail utterly. The fault is then ours and no longer that of the legislature. The effect of a possible repeal of the law has been raised. This is only a threat if we fail to function as expected under the act. If we do function there need be no fear of repeal.

May I call the attention of each member of the Bar to the article of Frank J. Trelease, Jr., professor of law at the University Law School, in the second issue of the Wyoming Law Journal which each of you has. I commend the article for study.

The litigating public is certainly not interested in, and is justly displeased at the shortcomings of his attorney being the subject of an opinion, rather than the merits of his controversy. Any simplification of procedure could not but help to make for better administration of justice. Code pleading is a great improvement over the common law method of presentation. Cannot our codes be shortened and simplified with similar benefits?

Judge Kennedy has very kindly consented to bring to us his experiences with the practice under the Federal Rules—there is much in these rules we can adopt with profit. Maybe not all, but this Committee has a real task, and the Court a great responsibility.

I will now briefly outline the accomplishments and activities of the present Board.

At its January meeting it instructed the officers to canvass the possibility of having laws of interest to attorneys, that were passed by the legislature, distributed to the members as soon as possible, and authorized necessary expenditures to accomplish this.

The Secretary had several conferences with the Secretary of State which finally resulted in a proof copy being mailed to each office in which there was an active member of the Bar, as soon as possible after the Act had been signed and printed. The Session Laws are not yet ready for distribution, almost 6 months after the adjournment, and you can readily see what would have been your handicap, if it had not been for this service. In order that the Secretary of State might be advised of the appreciation of the Bar, the officers have written letters of commendation, the Commissioners in session on July 28th passed a resolution of commendation and sent him a copy, and I think that this meeting would do well to pass a similar resolution. It is a practice we should like to see continued and want him to feel it is truly appreciated. The total cost of this service to the Bar was a box

of candy to each employee in the Secretary's office, who assisted in mailing out the copies.

You are all aware that the printing contract with the Prairie Publishing Company for the publication of the official Supreme Court Reports is on a stand-by basis, so that they do this work when they have the time and material. Did you know that the law provides that they must be bound in "First-class law sheep and equal, at least, in style and quality, to volume 26 of the Wyoming Reports"? The legislature alone can consent to any modification of this provision. There is no sheep binding available, at least at a price at which it can be placed upon the volumes which must be sold at $4.50 each. I am told there is now in the hands of the printer sufficient material for two full volumes. There appears to be nothing the Bar can do to expedite their publication.

We investigated and found not practicable the mimeographing and distribution of the opinions as rendered. In the first place, no one was particularly interested in doing the work, and in the second, the cost would have been too much. Mr. Lazear, the official reporter, had promised to do all he could to facilitate getting the material to us if the project had been feasable.

As instructed by the Annual Meeting last year the Board has provided for the joint publication and distribution of the Wyoming Law Journal. It has committed the Bar to pay one-half of the cost for the first 3 issues at not to exceed $150 for each issue. Two have now been published and distributed. The first, a copy of the proceedings of the Bar, and the second, consisting of a lead article by Professor Trelease, hereinbefore referred to, and a series of notes by students. Since the second issue has just been received, I have not had the opportunity to read it all, but feel I can recommend it as useful reading. I am told that material for the third and last issue during the present fiscal year of this organization is now with the printer. I hope this meeting will recommend that the new Board continue the present practice of joint publication.

The Commissioners have functioned well in conducting such investigations as were necessary for infractions of the code of ethics and are entitled to commendation. Luckily but few have been necessary, and all but one has been concluded.

Except for resolutions upon pending legislation in Congress and vital to the lawyers of the state, and several investigations of alleged illegal activities of certain ambulance chasers operating in the state, from outside, this summarizes pretty much the activities of the Bar, its Commissioners, and Officers for the past year.

As to recommended activities for the future: we do not have in this state any law, rule of Court, and but one opinion, defining the practice of law. Not infrequently occasions arise where a case might

be instituted to accomplish this desired definition. Even though the results would probably be piecemeal, they would be well worth while, and the Bar could and should finance the bringing of such actions, hiring special counsel when advisable.

The charge is often made that the Bar is getting crowded, that more and more agencies are being created and devises used to circumvent the necessity of settling controversies in the Courts. Many of these can be attributed to the delays and pitfalls of litigation. Abstractors are giving opinions upon titles in some localities, and attempt to draw papers and advise on the means of curing defects; realtors do a large portion of the conveyancing; and collection agencies solicit accounts, conduct suits to collect, and draw instruments to settle accounts. Some even regularly solicit attorneys through the mails, which practice they must have found profitable, to continue. While few of us ever relished this collection business, it nevertheless was formerly a considerable source of revenue to the energetic young lawyer and helped greatly to pay office expenses while waiting for other business, and was a profitable source of contact.

A great number of our younger members have had intensive and thorough courses in the law of taxation. An increasing number of our older men are trusting the making of their income and other tax reports, and those of their clients, to the accountants, who are not only aggressive but often careless and reckless in their attempt to interpret the law, both as to the tax relationship and as to the effect of making the return in a certain manner. I am certain that none of the young lawyers who have had this training would make the mistakes I have seen made by these so-called tax experts. It behooves us of the legal profession to protect and promote these men, who have gone to the trouble to perfect their training in this direction, and if the making of returns for ourselves and our clients is too laborious, to scrutinize the service these men can offer before employing or recommending an accountant with no legal training and but little ability to make legal interpretations and applications.

Many of the State Bars of other States, and County and Municipal Bars of the larger cities, have found it advisable to adopt what is commonly known as minimum fee schedules. I am well aware many are opposed to this practice, some fear that such an effort results in the minimum fee becoming the maximum, and others charge that the mandatory type fee schedule smacks too much of labor union tactics and is probably not ethical.

The American Bar Association has on two separate occasions published opinions upon this subject. Both have condemned the practice of the mandatory provision of such schedules being contrary to the tradition and independence of thought and action which is necessary to professional existence, and a careful consideration of these

opinions shows that it is not considered proper for a bar association to attempt to impose upon its membership a mandatory fee schedule. They make the distinction that a fee schedule which reflects the customary charges of the Bar for similar services is perfectly proper, often very helpful and is not to be condemned. I think it is self evident that there is a decided difference in a lawyer's relationship and charge to a regular client, and to the casual client, such as is the case in the major portion of the divorce business. It is my personal opinion that the attorney who deliberately cuts fees below the customary charges in the community in this class of business and particularly to the "shopper" is doing himself and his fellow attorneys a grave injustice.

Along this same line some discussion of the value of legal services or the amount which a client should be charged is an exceedingly delicate and touchy subject, and a perplexing one to most young attorneys. The amount of the bill, of course, is one of concern to both the lawyer and the client. Other lawyers, however, have an indirect interest therein. If a lawyer charges too much he may bring the profession into disrepute. If he consistently charges too little he rightfully may be condemned as a price cutter. Fees cannot be determined by any purely mathematical formula—experience, amount involved, and many other elements must be considered. Young lawyers who are perplexed by the problem of fees should be counseled freely by their seniors.

Many elements in the fixing of fees are intangible, but an accurate day by day record should be kept on all matters pertaining to business of a protracted nature. While time should not be the only basis of calculation, it is one of the important and the one that can be made certain.

A difference of opinion between the lawyer and his client, on the subject of fees, is one of the most embarrassing. The lawyer is selected in the first instance by the client because of faith in his ability, integrity and honesty. The lawyer and his client work together to achieve a result—if when the matter is concluded there is a disagreement as to fee—nothing could be more unpleasant.

It occurs to me that it is important that the matter of a customary charge is one needing serious consideration.

Many matters of keen interest to the Bar are presenting themselves each year. In the states with large bars, where unlike ours in Wyoming, there are specialists in practically every line of the practice, the organizations have been rather successfully grouped into sections for the study of the particular problems of these specialists. In our state the practice is not so concentrated, and practically all are general practitioners, with some specializing more than others. It has been suggested that speakers from the various heads of sections in the American Bar might be secured to address our Bar from time to

time upon certain specialties of interest to most of our practitioners; however, this has been impossible to date; I hope in the future it may be done.

This meeting might with profit digress from its usual course, and discuss and pass a proper resolution to be forwarded to our Congressional Delegation advocating a change in the Revenue Laws, which would permit husbands and wives to file separate Income Tax returns, to give to residents of this state the same priveleges and benefits as enjoyed by residents of Community Property States. There were 5 bills in the last Congress having this as their object. None of them passed. To me such a law is preferable to any change in our property law. However, some lawyers vigorously disagree with me and advocate the adoption of a community property law in this state.

In the past, women's clubs, and other organizations, have interested themselves in Juvenile Courts in certain counties. Such courts cannot be established without amendment of the constitution. It would appear that much good might be accomplished in the more populous sections of the state, where the duties of the District Judges are very heavy, by abolishing salaried Justices of the Peace and establishing County Courts, presided over by trained men, their jurisdiction fixed to handle juvenile, J. P. and minor matters, now exclusively in the District Court. This matter is worthy of serious study.

While it had been suggested another meeting in Yellowstone Park be arranged with Montana, Idaho, and possibly Utah, your Board gave that matter but little consideration this year and quickly accepted the kind invitation of Sheridan. We felt that a meeting in the Park was impracticable at this time in view of unprecedented travel and heavy demand upon hotel accommodations. We also remembered the very pleasant and profitable meeting here in 1936 and were anxious to accept. A park meeting in the near future is still a prospect to be looked forward to.

In conclusion, I want to thank all of the Commissioners, the Officers, and the individual members for the excellent cooperation we have enjoyed during the past year—especially the Commissioners to whom complaints have been referred. Each has done his duty promptly, efficiently and wisely. I have enjoyed greatly the honor conferred upon me and thank you all.