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Montana Bar Association Activities

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LAW SCHOOL

The Law School has had the largest enrollment in its history during the present academic year. Since September 158 students have been enrolled. Substantially all of these are veterans. The number would have been much larger had not restrictions been placed on the enrollment of non-resident students. These students are an unusually serious and studious group.

To meet the needs of returning veterans the School of Law will continue to operate for another year on a four-quarter basis with a full schedule for beginners in the summer, autumn, and winter quarters.

The full-time staff of the School consisted of Edwin W. Briggs, Francis E. Coad, David R. Mason, J. Howard Toelle, and C. W. Leaphart. The part-time teachers included William T. Boone, Edmund T. Fritz, J. C. Garlington, Walter L. Pope, and Russell E. Smith.

MONTANA BAR ASSOCIATION ACTIVITIES*

"Next Time—A Judge!" was the theme of the Fifty-eighth Annual Meeting of the Montana Bar Association, held in Butte, Montana, September 5th, 6th and 7th, 1946. The "high-lights" of the meeting were the President's Address, given by the Honorable H. C. Crippen, of Billings, Montana, the address of Roy H. Glover, prominent attorney of Butte, Montana, on the subject, "The Place and the Influence of the Lawyer in World Affairs," and the address on "War Crimes" given by Charles Horsky, of Washington, D. C., and formerly of Helena, Montana.

Chronologically, after appropriate invocation and the Salute to the Flag, the delegates were welcomed to Butte, "The Friendly City," by Tom J. Davis, local attorney and former president of Rotary International. E. C. Mulrone of Missoula, Montana, responded.

President Crippen in his address stated that the officers of the Association had been given three specific duties to be carried out during their tenure of office; first, to petition the Supreme Court of Montana to adopt bar integration by Court rule, second to introduce and advocate before the Montana Legislature a bill changing the selection and tenure of judges;

*This statement has been furnished by Marshall Murray, Secretary-Treasurer of the Montana Bar Association.

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and third, to petition the Supreme Court to adopt a rule requiring uniform rules for the District Courts of the State. Hearing on the first, he reported, had been heard and the matter submitted to the Supreme Court, 27th of May, 1946, and no decision had been rendered as yet. On Judicial Selection and Tenure, President Crippen recounted the efforts of the Association since 1938, and that, altho the lawyers and Association members seemed generally favorable, a bill to submit to the people of Montana, a constitutional amendment to adopt the "Missouri Plan" received an adverse report from the committee in the Legislature, to which it had been referred, and was thereupon killed. As to uniform rules for our District Courts, he reported that this matter likewise had been submitted to the Supreme Court and was waiting its decision. Mr. Crippen also reported on a special meeting of Association officers and members held with the Montana Code Commissioner, relative to various questions concerning the new Montana Codes, particularly the matter of indexing. Next President Crippen explained that the Convention Theme had been taken from a recent editorial in the Journal of the American Judicature Society and in developing such theme advocated the necessity for appellate judges, both Federal and State, having experience on the bench of a lower Court. He also stressed the importance of the judiciary in our American system of checks and balances. In conclusion Mr. Crippen turned to the younger members of the bar, particularly the one-fourth of the entire membership lately returned from military service and said:

"Be proud of your profession, and it will 'follow as the night the day' the profession will be proud of you. Don't think you finished your legal education when you finished the law school. That was but a curtain raiser. Then, you begin to learn, and, when you have been at it for forty or fifty years, you will be disappointed that you know so little.

"In the practice, be as fair and courteous to your adversary as you wish him to be to you. Do not take an advantage that you would not wish him to take of you. Let your word to a brother lawyer be as good as a written stipulation. Don't ever get angry in the courtroom. That's what the other fellow wants. Be 'slow-pulsed and calm' at all times. Do not feel sore if you are beaten in a lawsuit. Victory is sweet, but defeat, if you are any good, is a part of your education. Love your office. It should be as sacred to you as your home. Be in your office at all possible times. Only mendicants receive alms on the street.

Worship at the most sacred temporal shrine in the world—the constitution—and keep ever before you, before your clients, before your people, the four freedoms of the Bill of rights. I call them the ‘of’ freedoms—Freedom of Religion, Freedom of Assembly, Freedom of Speech, Freedom of the Press. Forget the ‘from’ freedoms. They are spurious, without substance and impossible of attainment. The realization of freedom from want would mean the extinction of the race. Humanity would die of its own inertia. In that event, ‘This world would wheel a barren star on which the rays of the sun would fall as fruitlessly as falls the kiss of love upon the pallid lips of death.’”

After the report of the Secretary, Hon W. E. Keeley, Immediate Past-President of the Association, reported for the Executive Committee.

Charles E. Avery, Chairman of the Committee on Necrology, reported the death of thirty-six “brothers-in-the-law” since the previous association meeting, including: James H. Baldwin, U. S. District Judge for Montana; James Donovan, Attorney General of Montana in 1901; United States Representative James F. O’Connor; Thomas J. Walker, Judge of the U. S. Customs Court in New York; John M. Evans, former representative in Congress; R. Lee Word, former Montana Supreme Court Justice; John Edward Erickson, former Governor of Montana and United States Senator, and Clyde F. Murphy, native Montana lawyer and author of “The Glittering Hill”.

Roy H. Glover, of Butte, in speaking on “The Place and the Influence of the Lawyer in World Affairs” quoted Relman Morin, Chief of the Associated Press Paris Bureau and David Lawrence of the United States News, and drew a dark and dismal picture of the peace we have just “won.” In conclusion he called upon the profession “to safeguard and cherish Christianity and to repel any assault made upon it, please understand that I do so without the thought of any particular denomination, creed, sect or particular Christian belief. I ask this solely from the viewpoint of the fact that the philosophy of Christianity is an integral part of our Christian civilization and from the standpoint of its preservation. Communism and our form of Government are as antagonistic and irreconcilable as atheism and Christianity.”

Following there were reports by Lloyd A. Murrills, of Cut Bank, and J. B. C. Knight, of Anaconda, on the work of the War Readjustment Committee. Next James H. Kilbourne, of Billings, gave a very revealing address on “Operation of Traf-

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fic Courts in Montana", with a general discussion following, led by Paul Keller, of Helena. Finally I. W. Choate, of Helena, Montana Code Commissioner discussed the accomplishments and the difficulties in preparing the 1947 Codes of Montana. He explained that the new code will have over 17,000 sections and will be in eight volumes.

The lawyers and their ladies were entertained Friday evening by a Cocktail Hour, Buffet Dinner and Informal Dance at the Butte Country Club.

Saturday's proceedings opened with a report by James T. Finlen, Jr., of Butte, representative of the Association to the House of Delegates of the American Bar Association. He reported attending the meeting of the House of Delegates, along with William Jameson, of Billings, member of the Board of Governors and Julius J. Wuerthner, of Great Falls, Montana State Delegate. In outlining the accomplishments of the American Bar Association, during the preceding year, Mr. Finlen gave special recognition to Carl MacFarland, former Montana lawyer, in inducing the passage by Congress of the Administrative Procedure Act.

Charles Horsky, Montana lawyer, now of Washington, D. C. delivered an address on "War Crimes Prosecutions". Mr. Horsky had been assigned to the American staff at the Nuremberg trial. His was one of the most instructive addresses of the Convention.

Claude Meredith, Chief Attorney of the Fort Harrison Veterans Administration Facility, addressed the assembly on "Laws Pertaining to Veterans". Considerable discussion followed, led by Mr. Dompke of Butte, and Cleve Hall of Great Falls, relative to the unfairness of the Veterans Administration's ruling on "On the Job Training for Lawyers" not being possible where the lawyer had been admitted to the bar.

Reconvening after lunch, John W. Bonner, of Helena, related a number of his experiences as Chief of Investigation of War Crimes for the First Army.

Earl N. Genzberger gave a technical, but deeply interesting address on the subject, "Uniform Rules for State District Courts". "It has been universally recognized," said Mr. Genzberger, "that judicial procedure constitutes the mechanisms whereby judicial controversies are presented to and disposed of by judicial tribunals. Changes should be sought in those areas wherein the machinery constitutes the substantial factor in litigation. An ideal procedure permits a question to be

routed quickly and directly through the various stages of litigation to a decision upon the merits of the controversy. The matter of uniform rules, heretofore proposed by this association, should be further considered by the Supreme Court of this state, and if at all possible, should be promulgated for the government of the district courts. If statutes interfere with this power of the Supreme Court, the statutes should be amended or repealed."

Russell E. Smith, of Missoula, spoke on the subject "The Laws of Insanity in a Modern World". (Mr. Smith has a paper on this subject elsewhere in this volume.)

Ralph J. Anderson, of Helena, next delivered an address on the Election of Judges. He discussed various plans used for judicial selection in other states and indicated that one of the first things needed in Montana, is to raise the salaries of both District and Supreme Court Judges. He further demonstrated the lack of knowledge on the part of the citizenry generally as to the qualifications of judicial candidates, and concluded it was time either to develop a new method of election in Montana, or for the Association to take an active part in such selection.

William Meyer, followed with an address on Salaries of District Judges. He pointed out that salaries of District Judges had remained fixed in Montana since 1919. He contrasted the \$4,800.00 paid in Montana with the range of from \$10,000.00 to \$12,000.00 per year in California. Following Mr. Meyer's address, resolutions were adopted recommending the Montana Legislature to enact statutes raising salaries and submit constitutional amendments authorizing acceptance of such raises during present terms, as follows: For District Judges, \$7,200.00, for Justices of the Supreme Court \$12,000.00 and Chief Justice \$12,500.00.

H. Leonard DeKalb, of Lewistown, reported for the Resolutions Committee, and in addition to the foregoing resolutions on judicial salaries and various resolutions of appreciation of the Silver Bow Bar Association, business firms and residents of Butte for their contribution to the success of the 1946 Conclave, resolutions were adopted:

1. To press legislation for changes in the selection of Judges as previously recommended to the legislature;
2. Appointment of a committee to study inferior courts of the State and make suitable recommendations concerning the same;
3. Requesting the Montana congressional delegation to

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sponsor legislation so that lawyers appointed by U. S. courts to defend indigent defendants be compensated for their services in a measure commensurable with the nature of services rendered and the seriousness of the offense;

4. Seeking amendment of Montana Supreme Court rules pertaining to admission to practice of law in the state to provide that any person serving in the armed forces in World War II and who was graduated from a Class A law school in 1940 or subsequently be given a credit of five points when taking their bar examinations;
5. Expressing deepest appreciation to H. C. Crippen, retiring president, for his unstinted and efficient efforts on behalf of the association during his tenure of office.

The report of the auditing committee was made by Raymond Sheldon, of Ekalaka, and adopted.

R. E. McHugh, Anaconda, reported for the Nominations Committee, upon the adoption of which report the following officers were declared elected for the ensuing year:

James T. Finlen, Jr., Butte, Delegate to the House of Delegates of the American Bar Association;

Marshall Murray, Kalispell, Secretary-Treasurer, and the following vice-presidents:

Paul W. Smith, Helena,	District 1;
Henry Tyvand, Butte,	District 2;
Charles E. Avery, Anaconda,	District 3;
E. C. Mulrone, Missoula,	District 4;
John Collins, Dillon,	District 5;
W. W. Leslie, Bozeman,	District 6;
Carl L. Brattin, Sidney,	District 7;
Cleveland Hall, Great Falls,	District 8;
Wilford Doyle, Conrad,	District 9;
H. Leonard DeKalk, Lewistown,	District 10;
Hans Walchli, Kalispell,	District 11;
Max P. Kuhr, Havre,	District 12;
James H. Kilbourne, Billings,	District 13;
Nat Allen, Ryegate,	District 14;
Frank Catlin, Wolf Point,	District 15;
Raymond Sheldon, Ekalaka,	District 16;
C. H. Roberts, Glasgow,	District 17.

In accord with custom, nominations for President of the Association were made from the floor and Tom J. Davis, of Butte, was elected.

The convention closed with a banquet and dance at the Finlen Hotel, Saturday night.

THE FEASIBILITY OF REQUIRING PRESENTATION OF PURELY CONTINGENT CLAIMS IN PROBATE

Practitioners in the field of probate administration often encounter a problem of considerable difficulty in the matter of presentation of contingent claims. Claims which are fixed, whether matured, unmatured, liquidated or unliquidated give little or no trouble. They must be presented within the non-claim period or they are barred. Difficulty arises, however, when the court is called upon to determine the applicability of non-claim statutes to a contingent claim. Such statutes are of substantially two types: those generally requiring creditors to present "all claims" and those requiring presentment of "all claims whether due, not due, or contingent." Legislation which merely provides that "all claims" shall be presented may be interpreted by the court as not requiring the presentation of contingent claims. Atkinson indicates that this is the usual interpretation of such statutes.¹ At common law, a contingent interest was so nebulous as to be lacking in many of the incidents of property. However, states having the latter type of statute have much more trouble construing their statute so as not to include contingent claims. These non-claim statutes have the effect of a special statute of limitations and if the claims are not presented within the time allowed,² they are barred forever.

The Montana statute reads that all claims arising upon contracts, whether the same be due, not due, or contingent, must be presented within the time limited in the notice, and any claim not so presented is barred forever.³ In connection with this statute, attention should be called to another which states that no holder of any claim against an estate shall maintain any action thereon unless the claim is first presented to the executor or administrator.⁴

In *Nathan v. Freeman* the Montana Supreme Court held that a contingent claim on the executory contract in suit need not be presented before action is brought thereon against the estate. In that case, a lessee took a lease of real property to be used as a motion picture theater. It was agreed that after the

¹ ATKINSON, WILLS (1st ed. 1937) §237, p. 656.

²The time expressed in the notice must be ten months after its first publication when the estate exceeds in value the sum of ten thousand dollars, and four months when it does not. R.C.M. 1935, §10171.

³R.C.M. 1935, §10173. (Same as Cal. Prob. Code 1937, §707; and Cal. C. Civ. Proc. 1923, §1493).

⁴R.C.M. 1935, §10180. (Same as Cal. C. Civ. Proc. 1923, §1500).