

The Ten-Year Struggle for a Section of Family Law

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On this the twentieth anniversary of the family law movement in the American Bar Association and the tenth anniversary of the Section of Family Law, I want to recall the ten-year struggle that brought the Section into existence, and the men of vision and dedication who inspired its origin and persisted in bringing it to fruition.

Anticipating the debilitating backwash of World War II on family life, the National Economics Association in 1944 called for a national conference on family life. By June, 1946, more than one hundred national organizations had joined in a request that such a conference be called by President Truman. The National Conference on Family Life was held in Washington on May 6-8, 1948, where one hundred twenty-five organizations were represented, with over nine hundred participating "experts and specialists" from every state and thirty-three foreign countries. Eric A. Johnston, past President of the National Chamber of Commerce, was Chairman, Charlton Ogburn (Did Shakespeare write Shakespeare?), of the New York Bar, was Legal Counsel, and Dr. Ernest G. Osborne, of Columbia Teachers College, was Program Director.

Though taxing credulity in retrospect, the Board of Governors of the American Bar Association at first declined an invitation to participate. When, however, it became known that the National Lawyers Guild was about to be invited to represent the legal profession, Reginald Heber Smith, William L. Ransom and Olive G. Ricker went before the Board and "laid down the law," as only they could do. The Board relented, provided the delegation would pay its own expenses. Smith was named Chairman on the spot.

Reginald Heber Smith, namesake of the eighteenth century English

* This article is adapted from an address made by the author at the 1968 meeting in Philadelphia of the Section of Family Law of the ABA. The author is a past president of the Chattanooga and Tennessee State Bar Associations and was one of the first chairmen of the Section of Family Law.

religious song writer, Reginald Heber, was a pioneer in legal aid, having written "Justice and the Poor" in 1919. In recognition of a lifetime of service to the legal profession, he was awarded the ABA Achievement Medal in 1951. In 1957 the National Legal Aid and Defender Association established the Reginald Heber Smith Medal "for dedicated service." Judge Ransom was a former president of ABA and was then serving as Editor-in-Chief of the ABA Journal. He was awarded the ABA Achievement Medal in 1947. Olive G. Ricker was the beloved longtime Executive Secretary of ABA. These three and Charlton Ogburn were the firebrands who goaded the American Bar Association into recognizing the need for work in the field of family law.

During this period, converging circumstances and movements were crying out for action. The progressive breakdown of marriage and the disgraceful conduct of divorce trials were shockingly exemplified by my own six-months investigation of an odious "divorce mill" in Chattanooga, which rivaled Reno and Mexico, with a rate of nine times the national average (fifteen times as compared to marriages), a record of twelve divorces granted by one judge in seventeen minutes and a record of sixteen divorces granted by the same judge to one 27-year-old woman. Published on November 24, 1946, the report on this investigation, filling four full pages of the *Chattanooga Times*, was disseminated nationwide by all press services, was reviewed by the editors of the *Journal of the American Judicature Society* and the *American Bar Association Journal*, and was the subject of an article in the *American Magazine*, entitled, "The City of Broken Hearts," by Vance Packard. It won for the Chattanooga Bar Association the ABA "Award of Merit" at the 1947 Cleveland Convention. Thus was I unwittingly catapulted into the family law movement.

Having complained to deaf ears for many years about our antiquated divorce laws and procedure, the National Association of Women Lawyers adopted at the 1947 ABA meeting a resolution calling for a uniform divorce law that would liberalize residential requirements, abolish all guilt and punishment grounds and make the irreparable breakdown of marriage the chief ground for divorce. The Chairman of the sponsoring committee, Miss N. Ruth Wood of St. Louis, had written a classic article for the Spring, 1947 issue of the *Women Lawyers Journal*, tracing the history of divorce laws back to Matthew 19,9, where it is said:

Whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery; and whosoever shall marry her that is divorced committeth adultery.

This action of the Women Lawyers was treated in depth by Gledhill Cameron in the December, 1947 issue of *Woman's Home Companion* in an article which attracted wide and favorable comment.

It was left to Mr. Smith to crystalize the thinking of that period by his intellectually honest and morally courageous article in the December, 1947 issue of *Atlantic Monthly*, entitled "Dishonest Divorce." He lashed out at the ecclesiastical concept of guilt and punishment, as fostering trials in an atmosphere of hypocrisy and lies; he called for a concept of truth and honesty and procedure that would eliminate trial by combat and prevent character assassination. This article focused ABA participation in the Conference and truly ignited the spark that gave real impetus to the modern family law movement.

In December, 1947, President Tappan Gregory appointed the following delegation to represent the ABA at the Conference: Reginald Heber Smith, Chairman; Charlotte E. Gauer, President of the National Women Lawyers Association; Clarence Kolwyck, President, Chattanooga Bar Association; William P. MacCracken, former Secretary, American Bar Association; and William L. Ransom, Editor-in-Chief, *ABA Journal* and former President of ABA. Having been appointed Director of the Survey of the Legal Profession before the Conference convened, Mr. Smith recommended his Harvard classmate, Judge Paul W. Alexander, to succeed him as Chairman of the delegation. Judge Alexander's subsequent leadership won for him the accolade "Father of Family Law."

Because of a highly critical report by the National Probation Association on the political conduct of the Family Court of Toledo, Ohio, the Toledo Bar Association, Rotary Club and other civic organizations persuaded Paul W. Alexander to make the race for Judge of that court in 1936. Mr. Alexander was the original organizer of the Y's Men's Club, now a worldwide organization. The Parent Toledo Club bears his name. His voluminous diaries contain hundreds of congratulatory messages upon his election and tributes to his greatness as a judge of what came to be regarded as the model domestic relations court of America. He presided over that court for thirty years, retiring in 1966, one year before his death. At the zenith of his career, he served as President of the National Council of Juvenile Court Judges

and of the National Council of Juvenile Agencies. It has been estimated that he made a thousand speeches, appearing in most states and many foreign countries. He wrote at least a hundred articles for leading magazines, journals and reviews. His writings were learned and scholarly. His rhetoric was in the Churchillian style. He could be movingly oratorical, if demanded by the occasion.

After two days of roundtable discussions at the National Conference on Family Life we were permitted a special Legal Section presentation to the general assembly on the final day of the Conference. Reverting to his days as a criminal prosecutor, Judge Alexander not only made a report—he delivered an oration. Frequently interrupted by applause, he received a tremendous ovation when he had concluded. It was generally agreed by those in attendance and by the press that Judge Alexander “stole the show.”

An unexpected bonus for me was the privilege of attending a private party for Judge Alexander and anthropologist Dr. Margaret Mead, also a star at the Conference, where I sat enthralled by the scintillating conversation of that brilliant, quick-witted and profound woman.

Our 34-page report to the Conference, approved unanimously, was presented in summarized form to the House of Delegates at the 1948 Convention.¹ Three specific recommendations were offered: (1) That the President of the United States be asked to appoint a Commission to re-examine the laws regulating marriage and divorce and legal procedures in divorce cases; (2) That the ABA endorse the establishment of family and juvenile courts presided over by specialist judges with adequate quarters, staffs, and budgets; and (3) That a special committee be appointed to carry forward these proposals, to be known as the “Special Committee on Divorce and Marriage Laws and Family Courts.” These recommendations were adopted unanimously and without debate. And on September 7, 1948, the American Bar Association sanctioned a committee with that jaw-breaker title—hereafter so designated.

Having accomplished their purpose, Mr. Smith and Judge Ransom asked to be relieved as committee members and Ralph C. Busser, Jr., Esq., of Philadelphia, was added in their stead. Judge Alexander continued as Chairman. Judge Alexander and I were the only original members to continue on the committee until the Section of Family

1. 73 *ABA Reports*, 302.

Law was established in 1958. Mr. Busser and Miss Gauer served until 1956. Miss Gauer, Mr. MacCracken, and I are the only members of the original conference delegation who remain among the living. Other members who made substantial contributions included: Miss Eleanor March Moody, of Boston, President, National Association of Women Lawyers (1949), and Dorothy Young, Judge, Juvenile Court of Tulsa (1953-1956).²

The total annual budget of \$100.00 for the ABA committee was never exceeded and never all spent. Meeting on an average of two to four times annually at Chicago, New York, and points more distant, I estimate my expenses for the ten-year period at \$10,000. Judge Alexander's expenses were substantially higher. When the Section was established in 1958, I wrote the ABA Treasurer that the transition of this committee to a section had to be the cheapest in ABA history.

Our first year was devoted to an appeal to President Truman to appoint the Commission, but to no avail, as he feared criticism from the Catholic Church. This was the substance of our report to the House of Delegates in 1949.³

Despairing of persuading President Truman to appoint the Commission, our committee decided to proceed independently. At a meeting in New York on December 30, 1949, plans were formulated for the organization of the "Interprofessional Commission on Marriage and Divorce Laws," with officers, a board of trustees, and an advisory council and with our committee as the liaison between the Commission and the American Bar Association. So as to make certain that the Commission would not embarrass ABA, it was decided that Judge Alexander should be chairman of the Commission. This recommendation was approved by the House of Delegates at the 1950 Convention.⁴

After screening hundreds of names, we settled on a board and advisory council of thirty-three experts representing the professions of law, religion, medicine, psychology and sociology and the many

2. Remaining committee members: Joseph B. Lynch, Esq., of New York (1949-1950); George L. Vargas, Esq., of Reno (1949-1950); Ben H. Powell, Esq., of Austin (1950-1952); Miss Irene L. Dulin, of St. Louis (1956); Abraham L. Friedman, Esq., of Philadelphia (1956); Howard W. Cameron, Esq., of Las Vegas (1957); Harold W. Tobin, Esq., of San Francisco (1957); Louis H. Burke, Judge, Superior Court of Los Angeles (1957). (All years inclusive).

3. *74 ABA Reports*, 280.

4. *75 ABA Reports*, 272.

social agencies interested in family life and welfare. I will mention only one name,⁵ which should be familiar to you—John S. Bradway, Professor of Law, Duke University Law School, Chairman, Committee on Family Law, Association of American Law Schools, author and sociologist, recognized as the nation's leading authority on Family Law, and regarded by President Nixon and Mr. Charles Rhyne as their favorite teacher of the class of 1937. As Chairman of its Committee on Research, Professor Bradway proved to be the work horse of the Commission, going on to become the first Secretary of the Section. Upon his retirement, Mr. Nixon said of him at San Francisco in 1962 that by simple arithmetic he had contributed one-half million dollars in time to mankind.

With total grants of only \$12,000, the Commission was foredoomed to failure. Judge Alexander complained at the 1951 Convention that it was in a "squirrel cage because it couldn't start research without funds and couldn't get funds because it was not researching." We did present an outstanding program to a packed house at that Convention in New York—principal speakers, Paul Alexander and John Bradway. Our prime objective being modernization of our divorce laws, the Commissioners on Uniform Laws were even then awaiting the Commission's report to start drafting a uniform divorce law. That project is finally under way seventeen years later.

By the time the 1952 convention rolled around, rumors of criticism from ABA circles prompted a statement in our report⁶ that discontinuance of the committee might be interpreted "as a defection on the part of ABA in withdrawing its moral support from the Inter-professional Commission." We justified our position by showing that the big name Commission had inspired a plethora of articles in such publications as: *American Weekly*, *This Week*, *New York Times Magazine*, *Ladies Home Journal*, *Saturday Evening Post*, *Reader's Digest*, *The Woman*, *Red Book*, *Coronet*, *Pageant* and *Newsweek*, as well as the Journals of the American Judicature Society and ABA and various state bar journals and law college reviews—all either written or inspired by Judge Alexander. Also Robert F. Drinan, S. J. wrote a significant article for *Social Order*, entitled "New Approach to Divorce Laws," which signaled our first breakthrough with the Catholic Church.

5. The names of other members appear in 76 *ABA Reports*, 356.

6. 77 *ABA Reports*, 280.

The Committee's reports to the House in 1953⁷ and 1954⁸ were routine, reiterating its liaison status with the Interprofessional Commission, and recommending that the Committee be continued.

Except for the tremendous amount of national publicity engendered, the Commission's sole finished product was the publication of "Family Cases in Court" (Duke University Press) by Mrs. Maxine Virtue, of Ann Arbor, which analyzed her research into the operation of the divorce courts of San Francisco, Chicago, Indianapolis, Milwaukee, Ann Arbor, Detroit, and a number of Ohio cities.⁹ This turned out to be the final report of the Interprofessional Commission on Marriage and Divorce Laws, and it thereafter faded away, with no mourning on my part. I had grown tired of jargonistic language of the sociologists, like "open-ended frames of reference" and "When legal norms have been formalized, flexibility will be minimized." My difficulty was that my unformalized legal norms afforded me no frame of reference for the open-minded minimization of flexibility.

The faint hearted on the Committee were talking in terms of its discontinuance, but Judge Alexander would have none of it, and neither would I. Fortunately, another approach began to materialize. As early as 1954, President William J. Jameson had suggested to Reginald Heber Smith that his Survey of the Legal Profession should contain a recommendation that a Section of Family Law be established. His successors, Lloyd Wright and E. Smythe Gambrell, were stronger advocates. Mr. Smith promptly submitted the recommendation.

Somewhat to our surprise, in the year 1954-1955 the Board of Governors and House of Delegates approved the recommendation, provided sufficient interest could be demonstrated by a special committee to be appointed.¹⁰ One of the strongest advocates was John D. Randall, then Chairman of the House of Delegates and later President (1959-1960).

When the new committee, as well as our committee, failed to report any progress to the House at the 1956 Convention,¹¹ the incoming president, David F. Maxwell, promptly named me as chairman of the

7. 78 *ABA Reports*, 302.

8. 79 *ABA Reports*, 324.

9. 80 *ABA Reports*, 319.

10. 80 *ABA Reports*, 45, 172, 319, 394, 450.

11. 81 *ABA Reports*, 128, 326.

committee and Godfrey L. Munter, Associate Judge of the Municipal Court of the District of Columbia, as Chairman of the House of Delegates Committee,¹² with Judge Alexander to serve as liaison on both committees. Having just assumed the presidency of the Tennessee Bar Association, I protested my appointment, but to no avail. As a result, I farmed out so much business to other lawyers that my income tax for 1958 was exactly zero.

Because of criticism encountered by the committee during the previous year, Judge Alexander was asked to write an article for the August, 1956 *ABA Journal* explaining the necessity for a section. As always, his title was original and stimulating. Borrowing a phrase from his mentor, Dean Roscoe Pound, he wrote under the title “‘Not the Least Item’: A Section of Family Law.” He pointed out that in the broad spectrum of family relations in this technological, but frightening age, there are: “answers to be found, conflicts to be resolved, inconsistencies to be adjusted, errors to be corrected, wrongs to be righted, problems to be solved, and improvements to be made.” Then he asked: “Do we want social workers or lawyers calling the turns? Social workers know what the law does to the family. And they have ideas. More, they have ideals!”

My first act was to recommend that the name of our committee be changed to “Special Committee on Family Law” as being more descriptive of its purpose. Then I contacted all state bar presidents soliciting the support of their committees on family law and urging establishment of such committees where none existed.

At the invitation of Sol Morton Isaac, I appeared on the convention program of the Family Service Association of America at Cincinnati on November 17, 1956, along with Orison S. Marden, President, National Legal Aid Association, where both of us urged the adoption of a resolution directed to the ABA that a section be established. The resolution was unanimously adopted. With this endorsement, most similar organizations followed suit.

I requested thirty minutes time on the mid-winter program of the National Conference of Bar Presidents, but was told that my request came too late. Then I said “make it one hour at the annual convention”—and so it was. The panelists were Alexander, Isaac and Lon P. McFarland, President-Elect of my state bar. Sensing that our

12. Other members of the Committee were: Judge Paul W. Alexander, Professor John S. Bradway, William M. Wherry, Esq., of New York, Judge Dorothy Young.

program was well received, I impulsively called for a show of hands as to whether the group approved a section of family law. Every hand went up. Thence forward, we were on our way.

Meanwhile, Godfrey Munter, also serving on the Uniform Law Commission, had cut loose with such a campaign as only he could engineer – talking up the section, writing letters and soliciting advance applications for membership. More than five hundred applications had been obtained before the 1957 Mid-Winter Meeting. At the Convention, others were obtained from members of the Bar Presidents Conference, the Board of Governors and the House of Delegates, the latter being brazenly, and I hope discretely, solicited on the floor of the House.

President Maxwell had little to complain about when he went out of office in 1957. At the Mid-year meeting, Judge Munter announced the written endorsement of a long list of ABA officials, headed by Mr. Maxwell, and stated that at the forthcoming convention he would recommend establishment of the section. At the convention his full report (made as a joint report for both committees) stated that the proposed by-laws were complete and that organization of the section awaited only House approval. However, at the request of the Board of Governors, final action was delayed, pending further consideration at its October meeting.¹³

With Board approval on October 20, 1957, and the support of President Charles S. Rhyne, it was correctly assumed that the House of Delegates would follow suit at its Atlanta Meeting, February 24, 1958.¹⁴ Of course, we couldn't lose anyway, because Neva Talley was sitting in the House of Delegates, representing the National Association of Women Lawyers. And I hope the point is not missed in what I have said that but for women lawyers, we may not have attained sectionhood. It is time we rewarded their efforts.

Learning of our good fortune, Reginald Heber Smith wrote me from a sick bed:

All my life I have tried to build a bridge between law and the other social sciences. The Section of Family Law at last provides the proper meeting ground and home.

Whitney North Seymour, President 1960-1961, dubbed the Section the "Conscience of the Bar."

13. 82 *ABA Reports*, 331, 410.

14. 83 *ABA Reports*, 672, 702, 704, 785, 808.

The Section was formally organized at the 1958 Convention at Los Angeles, with Judge Godfrey L. Munter as Chairman and Section Delegates, Paul W. Alexander, Vice-Chairman, and John S. Bradway, Secretary.¹⁵

I have tried to make this a story of individuals, because individuals make history and because what is personal is more interesting than what is abstract.

In Ecclesiastes, 11, 1, it is written:

Cast thy bread upon the waters; for thou shalt find it after *many* days.

With patience added to vision and hard work, many of those individuals have lived to find their bread. Others did not survive those many days. But in passing they have left a heritage for emulation by the Section of Family Law as it continues to cast its bread upon the waters.

15. The Council Members were: Morris N. Hartman, Esq., of Elizabeth, New Jersey; David H. Jacobs, Esq., Meriden, Connecticut; Sol Morton Isaac, Esq., Columbus, Ohio; Una Rita (Morris) Quenstedt, Washington, D.C.; Judge Louis H. Burke, Los Angeles, California; Neva B. Talley, Little Rock, Arkansas; William H. Wherry, Esq., New York, New York; Judge Dorothy Young, Tulsa, Oklahoma.