Indiana Law Journal

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Proceedings of The Annual Meeting

PROCEEDINGS OF THE ANNUAL MEETING

Welcome and Response

The 1938 Annual Meeting of the Indiana State Bar Association was held at the French Lick Springs Hotel, French Lick, Indiana, September 16 and 17.

The first session was called to order at ten forty-five o'clock A. M. September 16 by President Louden L. Bomberger.

Mr. Henry Heil, of Orleans, President of the Orange County Bar Association, speaking for the Orange County lawyers and the lawyers of southern Indiana generally, extended a hearty welcome to the members of the Association.

Hon. Clyde C. Carlin, of Angola, Judge of the Steuben Circuit Court, and Senator William F. Hodges, of Gary, graciously responded, accepting the hospitality of southern Indiana, and admitting the beauty of her hills, but they did not forget to mention the "lakes," "blue gills" and the "saxophones" of northwestern Indiana; or the "sand dunes covered with the lupine and the columbine" of the Gary district. The relative merits of the attractions of southern, northeastern and northwestern Indiana having been disposed of by the welcoming and responding orators, the convention turned to an examination of the state of its treasury.

Report of Treasurer

Mr. Thomas C. Batchelor, of Indianapolis, as Treasurer of the Association, made the following report as of August 31, 1938:

Attention is called to the fact that because of the later date of the annual meeting this year the Treasurer's report covers a period of fourteen months instead of the customary year. The Association's income is derived almost entirely from dues and advertising in the LAW JOURNAL. The income from dues is highest in January and grows progressively smaller each month of the year, while expenses remain more or less constant.

Had the report covered a period of only one year the balance shown as of June 30, 1938, would have been $3,759.97. A further comparison is found in the balanec on hand as of August 31, 1937, the amount being $1,884.37.

When the books were closed August 31st of this year, the Association had no outstanding indebtedness with the exception of the printing expense of the August LAW JOURNAL. Invoice for this item had not then been received.

The report follows:

The Treasurer was charged on June 30, 1937, with the sum of.....$ 3,164.89

During the fourteen months following that date I have received the following amounts:

Dues	$ 7,160.00	
Advertising, Law Journal	1,831.75	
Sale of Law Journals	55.90	
Miscellaneous	90.75	9,138.40
		$12,303.29

As Treasurer, I have expended the following amounts:

Law Journal Expense	$ 5,068.23	
Secretary-Treasurer	2,332.66	
Stationery and Postage	561.19	
Expense of meetings	842.17	
Committee expense	301.57	
Officers' expense	81.09	
Special Printing	109.75	
Miscellaneous	113.12	9,409.78
Leaving a balance on hand with which your Treasurer is charged		$ 2,893.51

Printed Reports

The printed program which had been distributed prior to the meeting carried the reports of the committees listed below. The chairmen of the various committees presented resumes of the reports and all were approved. The reports thus printed and distributed are not reprinted here. The committee reports heretofore printed and so handled are as follows:

1. Membership Committee.
2. Committee on Judicial Selection and Tenure.
3. Committee on Amendments to the Bankruptcy Act.
4. Committee on Integration of Local Bar Associations.
5. Committee on Legal Education.
6. Young Lawyers' Committee.
7. Committee on Canons of Ethics.
8. Committee on Illegal Practice of Law and Grievances.
9. Committee on American Citizenship.
10. Committee on Criminal Jurisprudence.
11. Report of Committee on Jurisprudence and Law Reform.

Reports not heretofore printed are set out herein.

Report of Committee on Necrology

Hon. John C. Chaney, Chairman, of Sullivan, read the following report for the committee:

Death plucks the ear, and says—
"I am coming."

* * * *

This life, what be it?
A few short years
And then the ceaseless psalm
And the Eternal Sabbath of the Soul.

Chief Justice Hughes, in mention of the life of Newton D. Baker, said:

"The most beautiful and rarest thing in the world is a complete human life, unmarred, unified by intelligent purpose and uninterrupted accomplishment."

(Here followed a list of fifty-one members of the Bar who have died since the last annual meeting.)

The grave is the ordination of equality.

It buries every error, controversy and defect and extinguishes every resentment.

From it spring none but fond regrets and tender recollections.

It calls up—in long review—the whole history of virtue, gentleness and duty,

And is the mute testimony of inspiring love, coupled with the thrilling pressure of the hand, and the last look of stifled grief.

Then shall we not weave the chaplet of love, and strew over it Nature's beauties with their aroma, in contrite memory of these fallen members of the Bar.

The report was adopted and the members of the Bar stood for one-half minute in silence in respect to those of the Bar who had died since the last annual meeting.

Of the fifty-one names listed in the report former issues of the JOURNAL have noted all save four.

The following deaths mentioned in the report have not heretofore appeared in the JOURNAL:

Richard F. Werneke, of Terre Haute, died August 7, 1938, age 56.
Harry F. Rust, of Indianapolis, died August 24, 1938, age 47.
Albert E. Thomas, of Fort Wayne, died in 1937, age 63.
H. Parnell McGreevy, of Fort Wayne, died August 20, 1938, age 36.

In addition to the deaths mentioned in the report and those heretofore reported the following have come to the attention of the Editor:

Thomas B. Coulter, of Vincennes, former Judge of the Knox Circuit Court, died September 27, 1938, age 66.

Finley P. Mount, of Chicago, who practiced at Crawfordsville from 1892 to 1912, died in September, 1938, age 71.

Hyatt L. Frost, of Connersville, died September 27, 1938, age 78.
John W. Bowlus, of Indianapolis, died August 14, 1938, age 79.
Charles G. Reagan, of Noblesville, died August 12, 1938, age 68.
Joseph T. McNary, of Logansport, died August 17, 1938, age 88.
Enos W. Hoover, of Indianapolis, died in September 1938, age 76.
Scott Thompson, of Rising Sun, died September 10, 1938, age 71.
Forest F. Helms, of Indianapolis, died October 1, 1938, age 35.

Report of Committee on Administrative Law

The report was presented by the chairman of the committee, Mr. Donald L. Smith, of Indianapolis, was adopted by the Association and is as follows:

This committee has not attempted to go into the question from a federal standpoint on the numerous and far-reaching problems now being considered relative to the procedure and practice of administrative agencies. Any intelligent and complete report and discussion of the vast number of federal administrative agencies, their peculiar and unusual rules of practice, would consume more time than is allotted to our entire meeting.

We do desire to enumerate the various administrative agencies, created by our own legislature, which are now functioning in Indiana, which will give all of you some idea of how vastly important and far-reaching this question now is. We may have missed some of them, but they are as follows:

Board of Dental Examiners.
Board of Examination of Nurses.
Board of Embalmers and Funeral Directors.
Board of Medical Examiners.
Board of Registration and Examination of Optometry.
Board of Barber Examiners.
Board of Beauty Culture.
Board of Registration of Architects.
Athletic Commission Regulating Boxing, Sparring and Wrestling Matches.
State Livestock and Sanitary Board, who examine and license Veterinarians.
State Board of Tax Commissioners.
State Securities Commission.

Board for the Registration of Professional Engineers and Land Surveyors, a division of labor in the Department of Commerce and Industry which is administered by Commissioner of Labor.

The Industrial Board, which administers the Workmen's Compensation Law.
Public Service Commission of Indiana.

All the foregoing are accompanied by certain fees affixed upon the various citizens whose vocations or activities come within the jurisdiction conferred upon these boards in question.

Personnel of Boards

All members of these boards are appointees of our Governor. Without in any manner impugning motives of our Governor in making these appointments, it is a matter of common knowledge that previous political activities have great weight with all our Governors when it comes to selecting the members of these various boards. Sometimes men are secured who are unbiased and peculiarly well qualified for the work to which they are assigned; other times not. Another disturbing element is that powerful groups or those financially interested in matters over which the particular board has jurisdiction, are generally quite active in advocating or opposing the prospective appointees to these administrative agencies. As a result, in numerous cases the boards are composed of men, untrained in any rules of evidence, with no past experience in hearing and

passing on complicated questions of facts or of construeing legislative enactments and the language used therein. As a matter of fact, each member of these various boards follows his own peculiar ideas of what is admissible and pertinent and what is not.

The ultimate aim of any hearing, judicial or administrative, is to ascertain what the real facts are. We desire to quote from a paper read by Albert E. Stephen at the Cleveland meeting of the Bar Association:

"'What is truth?' said jesting Pilate, and would not stay for an answer. There is modern significance in Bacon's challenging quotation. No suggestion appears that this Roman 'trier of the fact' was harassed by a press of other business, or that the law's delays, technicalities, and expense rushed him forward. After he put his question, he returned hastily to the populace eager only to determine how the winds of public opinion were blowing. He heeded their cry and gave them Barabbas."

What, if any, rules of evidence should govern the procedure before this large number of boards or administrative agencies? The committee, at this time, has no recommendations.

Coming to the question of a review of the action of any board by the courts, together with other very hotly debated questions, surcharged with politics, is, how much review, and the manner of conducting the same, should be indulged in by courts, of any finding of any administrative agency. Take in Indiana, an aggrieved party, as to any action by the Public Service Commission, can bring an action in the Circuit or Superior Court, to suspend or set aside the Commission's order, which is heard by a trial de novo, with the burden on the aggrieved party to show that the former order of the Commission is unreasonable or unlawful. That even with the orders of this powerful body, the court has no right to grant any affirmative relief but may merely set aside the order in question as being unreasonable and unlawful, leaving the parties right where they started in the beginning.

Various rules also apply as to appeals from the Securities Commission, Workmen's Compensation Commission, the Unemployment Commission, the issuance of licenses to insurance companies, the Gross Income Tax division, and an appeal from the Board of Medical Registration issuing or denying a license to a physician. Your committee has not attempted to recommend a solution of these innumerable questions.

Another question of outstanding importance to our profession is whether or not appearances on behalf of parties affected should not be limited to members of our profession.

Inasmuch as the present tendency is to transfer the hearing and determination of a large number of questions, affecting so many of the industries and so much of the wealth of our state, from the courts to the boards and commissions which have been enumerated, we do recommend that a committee be selected who will go into the various questions which our report suggests, with a view to recommending and advocating the passage of whatever legislation that may be necessary, to, first, secure the selection of members of the various boards who are both qualified by experience and training to do the work to which they are assigned and, also, unbiased and free from prejudice; second, we recommend such legislation as will necessarily protect, by appeal, the rights of any party who was aggrieved by a decision of the respective boards; third, to simplify, as far as possible, rules of procedure, especially relative to the admissibility of evidence before these numerous administrative agencies.

Report of Board of Law Examiners

Mr. Alan W. Boyd, of Indianapolis, Secretary of the Board, gave the following report on the work of the Board:

Upon examination of prior reports of the work of the Board, I find that not since 1935 have any statistics been included. Since the work has now been in progress for seven years, a review of the results for the entire period may be of interest to the Bar.

Since the last summer meeting of the Association, four examinations have been given. In all, not allowing for duplications, 549 have been examined, 267 of whom (or 49%) received passing grades. This is, as will appear, below the usual percentage, but is due chiefly to the March examination when only 22 out of 78 passed. This result was apparently due to two things. Only 30 of the applicants were taking the examination for the first time and many, if not most, of these would not have been eligible applicants under the present educational requirements.

By way of contrast, in the two July examinations, there were 298 taking the examination for the first time and 80 repeaters. Of those taking it for the first time, 179 or approximately 60% passed. Of the total of 378, 204 or approximately 54% passed.

Since the organization of the Board in July, 1931, there has been a total of 1,661 applications for admission by examination. Of these, 894 or practically 54%, passed their first examination; 172 passed the second examination; 54 passed on the third examination; 10 passed on the fourth examination; 2 on the fifth; and 1 on the sixth examination. This makes a total of 1,133 or more than 68%. This does not mean, however, that the remaining 32% have finally failed.

Three hundred and twenty-six of the 767 who failed on the first examination have never made a second attempt. Consequently, only 441 took a second examination and of these 39% passed. Of the 269 failing the second examination, 116 have never made a third attempt. Of the 153 making the third attempt the passing percentage is 37. Only 42 have attempted a fourth examination with 10 passing; 2 out of 15 passed a fifth examination, and 1 out of 5 passed a sixth.

It will thus be observed that only a very few have finally failed the examination. Of the 528 who have not passed, 405 have applications which are still pending and may take the examination again at any time they desire; 113 of the remainder have either withdrawn voluntarily or have failed to respond to requests of the Board to indicate their intention as to further examinations. These have been conditionally dismissed by order of the Supreme Court on recommendation of the Board but may be reinstated upon a showing of good cause.

This leaves only 10 of the 528 whose cases have been finally disposed of; 6 of these were ordered denied admission for failing the allowed number of examinations, 2 were denied admission without taking the permitted number for the reason that their showing did not warrant further attempts and 2 were dismissed on account of adverse character and fitness reports based upon facts learned subsequent to initial favorable action by local committees.

Under the present rules only four examinations may be taken. While 3 applicants of the entire number have passed later examinations under former rules, it is felt that with the educational requirements now in force, four opportunities should be sufficient.

The "Bar Examiner", a monthly publication of The National Conference of Bar Examiners, carries in the May, 1938, issue the figures for 46 states. The national average for applicants passing the examination on the first attempt was 57% which happens to be identical with our own average from the July, 1937, examination to the July, 1938, examination, inclusive. These range all the way from 100% in Vermont and North Dakota, and 98% in Kansas to 19% in Montana, 22% in Texas and 28% in South Carolina. In New York this average was 51%, in Pennsylvania 47%, in Massachusetts 47%, in California 45%, in Illinois 61%, in Michigan 67%, and in Ohio 70%.

The national average for repeaters without breakdown as to the number of prior examinations taken, was 38%. Our own average for repeaters for the four examinations beginning July, 1937, was slightly more than 32%. I note, however, that in the 1935 report presented by Mr. Feightner, it was stated that the percentage for repeaters in other states was 38% but that our own percentage was only 25%. I quote the following from his report at that time:

"It is interesting to note that for forty-five states in the year 1934, 51% of those taking the examination the first time passed, while the figure for the same number of states on repeaters is 38%.

"This discrepancy in the number of repeaters, namely, the difference between approximately 25% and 38% in which we are low, has led us to an analysis of why this is true, and we find that of these repeaters, the very great majority, more than 90% I would say, are men who have come up through substandard or correspondence course schools, and the reason that our percentage is low on repeaters is due to the quality of material making up the repeaters."

It is difficult to determine to what extent the educational rules account for the present higher percentage. It is clear, however, that in our July examinations where the proportion of well-prepared applicants is much higher than in the other examinations, the percentage of those passing on the first attempt is now substantially higher. There are, however, many still eligible to take the examination under the old rules and it will be two or three years before we begin to realize the full benefit of the present requirement that the applicant must be a graduate of a Grade "A" Law school requiring at least two years of college work for admission.

These figures indicate that we are not far out of line with the standards of other representative states.

Work of the Appellate Court

Hon. William F. Dudine, Chief Judge of the Appellate Court of Indiana, made the following report:

As Chief Judge of the Appellate Court, I respectfully submit the following report covering the year beginning July 1, 1937, and ending June 30, 1938:

New cases filed	211
Cases decided with opinions	221
Cases disposed of without opinions	41
Cases transferred to Supreme Court for failure of four Judges to agree	39
Net gain of cases disposed of (as shown above) over number of new cases filed	90

The foregoing data does not include 43 cases which the Supreme Court took over from our docket on authority of Section 4-218, Burns 1936 (for disparity between the number of cases pending in the respective courts).

It is apparent from the above figures that the total number of cases on the docket of the Appellate Court has been reduced 133 cases in the last year.

On July 1, 1937, there were 254 cases on our docket which were fully briefed, and on July 1st this year there were 190, hence the number of cases fully briefed on our docket was reduced 64 cases in the last year.

The members of the Appellate Court duly appreciate the fact that delay in the adjudication of cases is burdensome and expensive to litigants and their attorneys. We have consistently attempted to dispose of the cases in the order in which they were fully briefed, excepting such cases as are advanced pursuant to statutes. The oldest case now on our docket in the order of fully briefing was fully briefed in November, 1936. This case was assigned for oral argument several times and was continued each time upon request of one or all of the parties and upon representation that the cause would probably be settled out of court. In addition to that case, there are but 15 cases on our docket which were more than one year old (after fully briefed) on July 1st of this year. I was unable to find any statistics as to the age of cases on our dockets at other annual reporting periods, but it is apparent from the docket that the age of the cases in the Appellate Court has been reduced considerably each year for the last seven years.

It should be borne in mind that this is a report of the *quantity* and not of the quality of the work of the Appellate Court. The quality of our work is reflected in the opinions which we have written and have adopted. It would be improper for me to comment upon that subject. I refer to it in order to avoid the impression that the Appellate Court has been sacrificing quality in its work in order to establish a record as to quantity.

We appreciate the action of the Supreme Court in transferring cases from our docket under Section 4-218, because it has helped to bring our docket more up to date.

We are neither boastful nor apologetic about the work which we have done in the past year. We sincerely believe that the work done by us compares favorably with the work of the court in previous years. We are glad that we were able to dispose of more work than was submitted to the court in the last year.

I assure you that the Appellate Court will carry on in its consistent effort to bring its docket more up to date and will strive continuously to improve the quality of the work to be performed.

Work of the Supreme Court

Hon. James P. Hughes, Chief Justice of the Supreme Court of Indiana, presented the following report on the work of that court:

New cases	216*
Rehearings	89
Petitions to transfer	86

* Ninety-nine of these were transferred from the Appellate Court—60 by the S. C. and 39 by the A. C. Twenty-nine of this number were original actions. Actually there were 88 appeals docketed originally in the S. C.

CASES DISPOSED OF

With written opinions	200
Without opinion	32
Rehearings	77
Transfers	80*
Oral arguments heard	107

* Of this number 59 were denied and 21 granted.

In view of the widespread discussion being devoted to the new rules of federal procedure, and the possible desirability of amending our state practice in conformity therewith, it is perhaps proper to make some general observation concerning the position to be taken by the Supreme Court of Indiana in connection with any proposed changes.

The legislature has recently conferred upon the Supreme Court a complete and comprehensive discretionary authority to regulate procedure in this state.[1] While the wisdom and propriety of such investiture of control might be debatable, the intent and purpose of the legislature in enacting the statute is clear. The Act reads in part as follows:

" * * * The Supreme Court shall have the power to adopt, amend and rescind rules of court which shall govern and control practice and procedure in all courts of this state; such rules to be promulgated and to take effect under such rules as the Supreme Court shall adopt, and thereafter all laws in conflict therewith shall be of no further force or effect. The purpose of this act is to enable the Supreme Court to simplify and abbreviate the pleadings and proceedings; to expedite the decisions of causes; to remedy such abuses and imperfections as may be found to exist in the practice; to abolish all unnecessary forms and technicalities in pleading and practice and to abolish fictions and unnecessary process and proceedings. * * *"

With such express provisions in the Act it is obvious that the framers of the statute intended for the Supreme Court to exercise complete supervision of procedure in Indiana.

In accordance with the authority so conferred upon it the court has abrogated two statutes regulating procedure. One was the act providing for a new and additional method of review in certain cases,[2] the other required all objections to pleadings previously raised by demurrer or motion to be raised by motion, and provided that but one such motion might be addressed to any pleading.[3]

The abrogation of these two statutes and the reinstatement of the former practice resulted from an insistent statewide demand from judges and lawyers. While these two instances are of perhaps minor significance compared to the importance of a general revision of our procedure, they do afford timely illustrations of certain hazards to be encountered in undertaking procedural reform. This is especially noteworthy since one of the new federal rules[4] embodies the principal provisions objected to in the Indiana Act above referred to abolishing demurrers.

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1 Acts 1937, ch. 91, p. 459.
2 Acts 1937, ch. 76, p. 406.
3 Acts 1937, ch. 185, p. 897.
4 Rule 7 (d) Rules of Civil Procedure for the District Courts of the United States.

We may, therefore, assume that the court will not hesitate to exercise the power given it to regulate procedure. At the same time it may be well to call attention to the fact that the court has evinced no disposition to act in a hasty, ill-advised or premature manner. The lawyers and courts of Indiana are entitled to have enacted any improvement possible in our judicial system. It hardly need be pointed out that such changes as are made should only be done after the groups representative of the bench and bar have had ample opportunity to familiarize themselves with the proposed revisions. It is certainly true that patch-work revision of our procedure should not be attempted. A great many of the undesirable features of our present practice are directly traceable to isolated attempts to institute reforms with insufficient attention having been given in advance to the ultimate result of such change upon our entire procedural structure.

In brief, then, it may be said that if all or parts of the new federal rules are to be adopted in Indiana, we should first have a complete draft of the proposed code. A sufficient amount of time should be permitted to elapse for their study and discussion. The Supreme Court may then be in a position to render satisfactory service in the promulgation of revised rules of procedure.

Report of the Judicial Council

In the absence of Judge Roll, president of the council, the report was made by Dean Bernard C. Gavit, secretary:

Judge Roll sent word yesterday afternoon that he was unable to be here, because of the illness of his wife, and asked me to report for the Council.

Unfortunately, therefore, I am not prepared to make a formal report, and I can simply tell you what the Council has been doing the past year, and something of what I hope may be accomplished during the rest of the year by the Council.

The Legislature last year made a rather substantial increase in the appropriations to the Council so that it was possible to employ a research assistant. That has been very valuable to the Secretary's office, and we have been able to do a great deal of work which otherwise would not have been possible.

Now, the Council has not taken any official action upon any of the matters which I will state to you as being before the Council. Again I can tell you only what has been done in preparation for the annual report of the Council in December and what, as a member of the Council, I hope the Council will do in the way of recommendations to the Supreme Court, and to the Legislature upon the subject that has been transferred to the Council.

In the first instance, as you know, two years ago, the Council recommended to the Legislature an act providing for the non-partisan election of judges. That act was not passed by the Legislature. I assume that there will be considerable sentiment in the Council for the recommendation again of the passage of that bill. Whether or not that will be done, of course, I do not know. So far as I know, there is no change of sentiment on the part of the Council upon that subject.

The Council this year undertook two distinct subjects of investigation and report. In the first instance, it felt that one of the principal problems in the field of administration of justice in this state was some reorganization of the

court system, particularly as it affected the trial courts, and a study has been completed upon that subject, which includes a survey of all of the court organizations throughout the country, and in other countries, and a tentative draft of a bill has been prepared and has been circulated among the members of the Council some time ago upon that subject.

The purpose of this bill is to provide for the coordination and the integration of the trial court system of the state, and it follows in a very general way the present plan of the organization of the federal judiciary.

An attempt has been made to provide for a conference of trial judges, and the supervision of the work of the trial courts of the state by a judge from the district in which the court is sitting, with final supervision by a state conference which is headed by the Supreme Court.

The bill provides in detail for the possible assignment of judges from one circuit or one court to another, and contemplates that all special judges will be selected from the bench rather than from the bar.

I shall not attempt to go into detail upon that any further. The matter has not been considered by the Council in detail, but there is pending before the Council a proposal which it is hoped will meet the present difficulties which exist under our system, where every court is an entity to itself, and over which there is no control by any supervising body.

It is felt that with the present judicial personnel all of the judicial business of the state can very adequately be taken care of, if the services of the various trial judges are available under some flexible system, where they could be assigned from one court to another.

It is also planned that some consideration will be given to a revision of the inferior court system of the state. The plans on that are as yet very tentative, but it is thought that practically all, if not all, of the jurisdiction of the justice of peace courts can be transferred to the superior and the municipal and city courts, and that some system can be worked out to meet that problem.

Now, the other general field of activity which the Council undertook to study and make some recommendation upon was the field of procedure, and the Council has proceeded along the line as you undoubtedly know, of considering the advisability of adopting the new federal rules as rules of procedure in the state.

A revision of those rules has been made and circulated in so far as the rules of appellate procedure are concerned, on the theory that it might be desirable to consider the advisability of an early adoption of a revision in that field and allow considerable time for further consideration of a revision of rules of pleading and practice.

As I say, a tentative revision has been formulated upon the subject of appellate procedure, and if any of you are particularly interested in that revision, I may say, it does incorporate into the Indiana practice the proposed revision in the federal rules. If any of you are particularly interested in that subject, if you will give me your name, or write me, I shall be very glad to furnish you with the present revision upon that score. It is anticipated that the revision so far as pleading and practice is concerned will be circulated shortly, and that consideration will be given to those matters at the meeting of the Council at the annual meeting on October 10.

I want to say this: that I am sure the Council is very much committed to the proposition that any significant revision in the field of procedure can only be successful if it meets with the approval of a very substantial majority of the lawyers in this state, and I hope that there will be some way in which the lawyers of the state can make themselves known and felt upon that subject. I am sure that the Supreme Court would hesitate, and ought to hesitate, to make any radical revision or any comprehensive revision of our rules of procedure, if it had any doubt about the acceptance of such a revision by the bar of the state. If that isn't accorded the new rules, I think they would rather frequently fail in their administration.

As far as I have been able to observe, there is almost unanimous support for a revision of the rules of appellate procedure, and I think in some way or other, the Supreme Court should be advised as to the attitude of lawyers upon that subject, and I hope that those of you who are really interested in this subject matter will take the occasion some way or other to make your wishes known upon that subject.

Report of Auditing Committee

The report of the committee was read by the chairman, Mr. Frank C. Olive, of Indianapolis, was adopted by the Association and is as follows:

Your auditing committee has examined the report of the Secretary-Treasurer of the Indiana State Bar Association for the fourteen months' period ended August 31, 1938. We also examined his books of account and his methods of showing all receipts and disbursements. His books show a cash balance of $2,893.51 as of August 31, 1938, and the monthly statement of Indiana National Bank of Indianapolis discloses that that was the balance on hand in that bank as of that date, standing in the name of Indiana State Bar Association.

We checked some of the disbursements with the books and found them correctly entered and accounted for.

We recommended that he procure a larger book, so that there could be a more thorough break-up of some of the accounts, especially that relating to miscellaneous expenditures.

The books appear to be well kept and accurate, and basing our opinion upon our rather cursory examination, we are of the opinion that they are correct and recommend the approval of the report of the Secretary-Treasurer.

President's Annual Address

Here President Louden L. Bomberger delivered his address, which is printed in full in the Leading Article section of this issue of the JOURNAL.

Friday Luncheon, September 16, 12:30 P. M.

This luncheon meeting was attended by the members of the Association and members of their families in attendance at the meeting. The meeting was addressed by Dr. Ruth Alexander upon the subject "Shall Man or the State Survive?"

Address of J. Armitage Ewing, K. C.

The address of Mr. J. Armitage Ewing, K. C., of Montreal, Canada, counsel and legal adviser of the Sun Life Insurance Company, upon the subject of "Civil Procedure in the Province of Quebec," is printed as a leading article in this issue.

Address of Fred E. Inbau

Mr. Fred E. Inbau, formerly of Northwestern University, now associated with the scientific detection of crime division of the Chicago Police Department, conducted an illustrated discussion of the scientific detection of crime. Mr. Inbau said:

In view of the lateness of the hour, gentlemen, I have eliminated some of the slides I wanted to show you at the beginning, but they pertain to the identification of firearms, and something about fingerprint identification. Those two things have been most publicized, and you probably know something about them already.

What I propose to do now is show you the slides on some of the rather famous cases, and those which illustrate something of greater interest than those of fingerprint identification and firearms.

Before going on with that, I am going to make a statement: that I was introduced as from Northwestern University. Just recently the Chicago Police Department acquired that scientific equipment, and I am now on the payroll of the Chicago Police Department, and with the gracious permission of the Chicago Police Department I am here to address you today.

(Here Mr. Inbau exhibited a number of slides. He then continued the discussion.)

As I said before, we don't have in mind this being used as evidence only. It doesn't detract from anything I said about the value of this instrument. It is very valuable in police investigations, and it is much more valuable and reliable than a lot of the lay witness testimony we are getting at the present time. But here is your difficulty. It is a matter of opinion and opinion only.

Now, you have quacks in this profession; you have them in fingerprints, in handwriting, in all these fields. There are quacks cropping up with devices like this, and you can usually spot them by the people who go around claiming one hundred per cent accuracy. When you hear a fellow spouting off like that, you can be reasonably certain he is a charlatan. You have many of them testifying in court as to fingerprint identification, but a competent lawyer can usually dispose of them on cross examination. Furthermore they have to come in court to show something to the jury. The opposing expert, if he is on the right side with his clients, can present a convincing argument to the jury, and the jury, when it is over, will likely be on the side of the man who is on the side of truth. When it comes to this instrument, it is difficult to suppose the court is wrong if in his opinion he says somebody is lying. I could show you some indications of it, but give you some indications of the man telling the truth, because so much of it is a matter of opinion, and so much depends

on training, and so much depends on the witness. We advocate when it is used in court it is upon agreement between the two attorneys. It is not likely that two opposing attorneys will agree to a charlatan testifying against them. For that reason we think it should be kept within those bounds.

If there are any questions, I would be glad to answer them.

QUESTION: What is the expense of the examination as you disclose there?

MR. INBAU: At the present time, since we are working for the police department, we are not taking private cases; at the laboratory when we used to run these cases, and, of course, service like this is still available although we are not giving it, usually the charge was $10 for each person examined, and a certain amount per hour for each hour spent after that. On the out-of-town cases the charge is usually $100 a day and expenses.

QUESTION: How much time is usually consumed in the examination?

MR. INBAU: Normally, if the person is telling the truth, maybe half an hour. If he is lying, and if we are to spend any time soliciting an admission from him, it may range two, three, six hours, sometimes, in important cases.

QUESTION: Can you compel a man to stand for an examination of that kind, if he doesn't want to?

MR. INBAU: I could give you some good arguments on either side. My own personal opinion is; I don't know. It is a pretty close question. If you once concede the admissibility of this, you could argue that it is not against the principle of self-incrimination. I am personally inclined to the view it is not a violation of the privilege when you consider the history. If you are interested, you might check up on that matter.

QUESTION: Not be used on adjudicated matter?

MR. INBAU: No, not likely to be as long as the court will refuse to admit it.

We are using psycho-galvanic reflex. There is a man out in New York that claims he is one hundred per cent accurate, but he hasn't established that to anybody's satisfaction that I know of. In experimental cases, that is where a person is lying about his age, and so on, by means of these electrodes on the hand, you can detect deception in 85% or 90% accuracy with blood pressure. In actual cases this psycho-galvanic is too sensitive. However, there is a lot of work to be done.

QUESTION: I understood there was some consideration in the Northwestern Clinic of the so-called truth serum.

MR. INBAU: We had used that in a large number of cases, in some of which we had good results. However, what this gentleman is referring to is a drug sometimes used in obstetrical cases, scopolamin, twilight sleep. They reduce a person to semi-conscious state, and then question him about the crime.

The difficulty is we know of quite a few cases where persons were lying before they went under the test and successfully lied during the test. However, we had some cases where we got some valuable evidence, like persons telling where they hid the gun, but by and large, a test like that takes eight hours to perform, and the results are not nearly so valuable to us as this instrument, and certainly this takes much less time so we have about abandoned the use of it.

Annual Banquet

The annual banquet was held in the dining room of the French Lick Springs Hotel at 7 o'clock Friday evening, President Bomberger presiding.

Judge John J. Parker, Judge of United States Circuit Court of Appeals, Fourth Circuit, delivered the address. Judge Parker's address is printed in full in the first section of this issue.

Rules of Civil Procedure in the United States District Courts

The discussion of this question under three heads, namely: (1) "Pretrial Procedure" by Mr. Albert H. Cole, of Peru; (2) "Trial Procedure" by Mr. Arthur L. Gilliom, of Indianapolis; and (3) "Appellate Procedure" by Mr. Burke G. Slaymaker, of Indianapolis, will appear in the December issue of the JOURNAL.

The Chandler Act

Mr. Carl Wilde, of Indianapolis, Referee in Bankruptcy, presented a resume of an exhaustive article prepared by him on this Act. The article will be published as a leading article in the December JOURNAL.

Election of Officers

The nominations filed by the Nominating Committee pursuant to the By-Laws were as follows:

FOR PRESIDENT—William H. Hill, of Vincennes.
FOR VICE-PRESIDENT—Milo N. Feightner, of Huntington.
FOR MEMBERSHIP ON THE BOARD OF MANAGERS—
Third District—Andrew J. Hickey, LaPorte.
Fifth District—Frank B. Russell, Upton.
Sixth District—O. B. Ratcliff, Covington.
Seventh District—Willis Hickam, Spencer.
Eighth District—Edmond L. Craig, Evansville.
Ninth District—Roscoe C. O'Byrne, Brookville.

FOR MEMBERS OF THE HOUSE OF DELEGATES OF AMERICAN BAR ASSOCIATION—
William H. Hill, Vincennes.
Milo N. Feightner, Huntington.

No other nominations were made. It was unanimously voted that the Secretary be instructed to cast the ballot of the Association for these persons for the respective offices for which they had been nominated. Ballot so cast and they were declared elected.

Saturday Luncheon, September 17, 1 P. M.

The Annual Meeting concluded with a luncheon at which the newly elected officers of the Association were introduced.

In keeping with the fact that this meeting was in session on September 17 a special "Constitution Day" address was given by Judge Roscoe C. O'Byrne, Chairman of the Association's Committee on American Citizenship.

Both the new Vice-President, Mr. Feightner, and the new President, Mr. Hill, made appropriate acknowledgment of their introductions in brief addresses.

President-elect Hill also outlined his plans for the work of the Association for the coming year. That part of the address setting forth the Association's 1938-1939 program follows:

INTEGRATED BAR

The Bar of Indiana and of the nation must not pass over lightly the criticism leveled against the profession. As lawyers, we know that much of it is ill-founded, yet we know that there is ground for much of the criticism and that some of it is justified especially as applied to a minority of the profession. The majority of lawyers have no right to fall back on their own rectitude with the thought that the criticism does not apply to them. Such a position is a negative attitude. What we need is a positive position taken by us as lawyers and especially by the Bar Association; a position which will move forward to rid the profession of those individuals which bring discredit upon the profession; those who for gain use their abilities and training as lawyers to thwart justice, those who spend their energies to defeat the proper administration of justice under the cloak of loyalty to clients. Lawyers in this category are racketeers and certainly are not entitled to be recognized as officers of the court. Such are traitors to the profession, and the public has a right to demand that they be expelled from the profession. The public is demanding that we take definite steps to rid our profession of the ambulance chasing lawyers, the trickster lawyer, the racketeering lawyer. Under our present statutory authority in this state it is impossible for the Bar Association to do this. We may prevent such from admission to the State and American Bar Association, but this does not prevent them from practicing law in our courts. The present statutory method of disbarment is totally inadequate. If the public desires that we clean house, then the Bar Association should be given authority and power. Then the responsibility will be wholly ours. If the profession is to be made responsible, then there must be Bar unification. The Bar must be able to act as a unit.

Largely through the efforts of our State Bar Association we now have in this state educational and character qualifications for admission to practice law and these requirements are being admirably administered by our Board of Law Examiners. The entire purpose of these requirements is to keep out of the profession the unfit. Is it not just as essential that we drive out of the profession those already in who are unfit and who bring the entire Bar into disrepute? The reprimand, suspension or disbarment of lawyers, for conduct inimical to

the public interest, is not effective under present conditions. The profession can only solve this problem when it is given the responsibility. The Bar of Indiana, in my judgment, is willing to assume this responsibility, not as individuals lawyers, but as a unified, all-inclusive bar.

This unification of the Bar is possible if our Legislature will give the Supreme Court power to integrate the Bar, not by way of regimentation, but by unifying it into a self-governing body in which all lawyers are members of the Association with the proper officials of the Association having power to hear and determine charges of misconduct in strict keeping with proper administration of justice, subject to appeal to the Supreme Court.

Then again such a unified bar, in a cooperative sense would be of service to the public in many ways in bringing to bear its influence toward promoting adequate and proper administration of justice. Twenty states have already put into effect an integrated bar and without exception to the benefit of the public and to the credit of the profession.

The Indiana State Bar Association is already on record in favor of an all-inclusive bar. For some time there has been an Independent Committee of lawyers who have performed a fine service in publicity and education for integration of the Bar of this state. The Young Lawyers Committee of this Association has made a special study of this problem and have made a survey among the young lawyers of the state, which indicates that a large majority of the younger members of the profession are in sympathy with an all-inclusive bar. Many newspapers in the state have indicated an attitude of cooperation and we feel reasonably sure that the press of Indiana would gladly give the matter of bar unification favorable publicity and thus render a real public service.

As your president, I shall ask the special committee on Integrated Bar and the committee on Legislation to push to the front the matter of an all-inclusive and unified bar in Indiana, and that these committees cooperate with any independent committee, the Young Lawyers Committee and the press, to the end that Indiana may join other states in this forward step, that the profession of law may be, indeed and in truth, an honored profession for service to the public in the administration of justice.

Judicial Selection

We desire to call your attention to the matter of the selection of judges. If we expect this state and nation to remain a government by law and not of men and that justice shall be administered without fear or favor alike to men of low and high estate, alike to rich and poor, it is essential we have a judicial system presided over by capable judges, learned in the law, without commitments to any political group or class. The proper administration of justice in Indiana requires that our judges shall not be made a political football but that qualification alone shall be the determining factor in selection of judges.

Personally, I favor a plan of selection that provides that those who are to preside over the courts of our state be selected without regard to political affiliation and that their selection shall not be as now, upon a political ballot at a general election. We submit that the committee on Judicial Selection and Tenure should make a careful study of this problem and that a comprehensive report be made at our midwinter meeting.

PRE-TRIAL

The State Bar Association can only justify its work by promoting a judicial procedure which will tend to give to the public and to litigants an administration of justice in keeping with the protection of personal and property rights under a constitutional system of government. A litigant has a right to demand of the profession and of the courts a speedy determination of his cause and that the final judgment shall reflect justice under the law. Our profession must promote all things which tend to a speedy trial and a just determination of any controversy. We recommend that our Association carefully consider and study pre-trial procedure which will shorten the proceedings, avoid the trivial technicalities of trial and to bring before the court the real issue in controversy. A pre-trial procedure has been found to solve many of the technical controversies which has given the public much ground for criticism. We trust the Committee on Jurisprudence and Law Reform will give this subject earnest consideration.

ADMINISTRATIVE LAW

In the field of Administrative Law may we suggest that while we deplore the present situation and recognize that oftentimes justice is flaunted and decisions are made by Administrative Boards and Commissions for political or class reasons, and justice is not administered in keeping with personal or property rights, yet we should recognize that Administrative Jurisprudence is here, and that it is here to stay. Instead of only condemnation of its shortcomings, which are many, and its lack of proper administration of justice, the profession should take a positive attitude. Our profession should take a position which would be constructive, lending our abilities and capacities to properly relate administrative jurisprudence to equity and common law jurisprudence, so that this government may continue to be a government of law and not of men. There is a close analogy between the present growth and development of Administrative Law and that of equity jurisprudence. Originally there was indeed a sharp conflict between the acts of the Chancellor and the Common Law Courts. Great antagonisms were engendered and it took centuries before there was a coalescing of equity and law. Finally, antagonisms disappeared and today there is no controversy between law and equity jurisprudence. Both have been welded into a system for the promotion of justice under a procedure which tends to protect a person in his property and personal rights.

It is the province of the legal profession to use its efforts and peculiar abilities to coalesce administrative law and equity and common law so that the entire fabric may produce a unified judicial system for the promotion of justice under the American system of constitutional government.

We submit this to the committee on Administrative Law for their earnest consideration.

THE RIGHTS OF OUR CITIZENS

The lawyers of this state and nation can perform a great patriotic service by using their unique and peculiar capacities and abilities in maintaining these fundamentals of government which make for human and social welfare under a constitutional form of government which protects every citizen be he rich or poor, strong or weak; a government in which all are equal under the law.

The Bar must be equal to its public duty in the defense of the liberties vouchsafed by the Bill of Rights. As to this item there should be a militant position taken by the profession. If a client can do so he should compensate the lawyer who defends him in preserving such rights, but if the individual is unable to pay for services, yet the profession as a public duty must protect such individual regardless of compensation.

To the President of the American Bar Association, our honored guest today, the State Bar Association of Indiana, I am sure, will pledge its cooperation and support in maintaining an attitude on the part of our Association to defend the liberties vouchsafed by the Bill of Rights wherever and whenever such rights are attacked. We will be glad to render any service your Special Committee may ask in this field.

Conclusion

Finally, may there be instilled into the membership of the Indiana State Bar Association and in the Association itself a spiritual quality and atmosphere which will make of the Association in this state a workman for the public welfare in the administration of justice that need not be ashamed rightly dividing the word and functions of justice to all men under a system of government that will justify the maintenance of democratic institutions.

An outstanding Annual Meeting was concluded with a fitting climax —the address of Hon. Frank J. Hogan, President of the American Bar Association. Mr. Hogan's address is printed in full in the first section of this issue.

Adjournment.