Proceedings of the Indiana State Bar Association (1926)
I have the pleasure of introducing the Honorable H. B. Tuthill, President of the Michigan City Bar Association, who will address you in welcome from the Association.

Judge Tuthill: Mr. President, Ladies and Gentlemen:

The citizenry of Michigan City is profoundly grateful for the opportunity you have given us to entertain you upon this occasion. We shall do our best to entertain you in a worthy manner.

I see before me men from nearly every county in Indiana, and if any counties are short, they probably will be filled before midnight. We shall not tell you at the present time all of the good things we have in store, but realizing that nearly every lawyer of any prominence, at least, in Indiana has clients who at the present time are residents, if not citizens, of Michigan City, we have chartered automobiles and motor trucks and we have imported caravans to take you out where they now reside that you may visit them, for the reason that we realize that no true lawyer ever neglects his clients, especially if that client is in duress vile.

How glad and how pleased we are to have the ladies with us. We lawyers of Michigan City, I may say, have been extremely fortunate in times past. We have never yet been compelled in any forum to meet a lady lawyer. I repeat we are glad of that
for the reason it has obviated the humiliating necessity of being compelled to explain how we lost that particular lawsuit.

We hope that you will remain as long as you possibly can, and going away, we hope you will go with the firm resolution to come again. We realize that you can only come again to visit us after you have departed from our midst. (Applause).

PRESIDENT DIX: On behalf of the Indiana State Bar Association, Mr. Cassius C. Shirley will make response.

MR. C. C. SHIRLEY (Indianapolis): Judge Tuthill, Members of the Michigan City Bar Association and Fellow Members of the bar generally: It is a very great pleasure indeed for me to bear the commission from your distinguished President to acknowledge the very generous and hospitable welcome that we have received from Judge Tuthill.

I am very glad to be here today myself. I know I voice the sentiment of the members of the bar of this Association, particularly, in saying that we are all glad to be here and for many reasons, some of which Judge Tuthill did not mention. It is a good thing to get around the various parts of the state and form acquaintances with those who are engaged in similar tasks, have similar problems to solve, whose tastes and whose aspirations are somewhat alike, and I take it that the lawyers generally have tastes and sympathies and aspirations somewhat in kind, else they would not be lawyers, and I know of no loyalty that should be cultivated more than the loyalty which binds members of the same profession together, or ought to, and I think does.

I am glad to be here for further reasons; glad to meet my old friend, Judge Tuthill, after a great many years. It has been a long time since I saw him, and other members of the profession, and those newer and younger members who are crowding us out and are soon going to hold the center of the stage, if they do not now do so. I am sure we have no regrets in that respect. We welcome their coming as they come, and as we go, and I think that there is much inspiration in the thought that the newer members of the profession are able to take the places of those who are going to pass off the stage before very long.

I suppose all who live in this corner of the state have read George Ade’s tribute to the country through which the Monon passes, printed on the back of the menu cards. I always read it before I order my dinner. He tells about his first excursion into the great world beyond the confines of Newton County and even until his eyes beheld the heaven-piercing spires of Michigan City. That has always impressed me because I have always rather indistinctly and yet in some respects vividly, in the back of my head a similar memory, only I came on what was then
the Indianapolis, Peru and Chicago Railway, which has had many vicissitudes and is now a part of the Nickel Plate. The country I came from didn't have a pond I couldn't wade with my shoes on without getting my feet wet, so what impressed me was not so much the heaven-piercing spires as the sky-blue waters of the great inland sea that lave the feet of your city, and I have never forgotten. It was the first one I had ever seen. It has been a long time ago. I saw it from the car window this morning and greeted it as a very old acquaintance.

There has been a very great transformation here within the sixty years since I came. I wouldn't have you understand that I only come every sixty years. I have been here several times in the interim, and everything has changed in the past sixty years except the great Lake which remains unchanged and changeless.

This transformation that you have had is really marvelous to those who only occasionally pass through on the railroad train along the southern end of the Lake. You have erected here within the past few years an industrial center that is the wonder and the marvel of the earth. I don't know what is going to happen in the next sixty years. I think I can predict without any risk of being proven a bad prophet that before another sixty years roll around, Michigan City and Hammond will have clasped hands across the Dunes and the marshes and all the intervening territory will have been fused into the greatest industrial center the world has ever known, and you lawyers who are fortunate enough to have chosen this part of the state as your permanent home are going to benefit very greatly in this marvelous development that has been started. I won't be here to witness it all; perhaps not my friend, Judge Tuthill. My memory goes back that he has been here about as long as I have but at any rate we are much delighted to visit your beautiful city, and we feel the light breeze on our brows after a long, hard journey. I thank you very much on behalf of the Association, Judge Tuthill. (Applause).

PRESIDENT DIX: It has been the custom of the Association for many years to at this time hear the report of the Membership Committee in order that the applicants for membership may be voted into the Association and thereafter participate in the proceedings. (Mr. Pickens was not here yet.)

* * * The report of the Treasurer was then called for, but Captain Salsbury was not in the room * * *

PRESIDENT DIX: Then before we pass into the President's address, which may mean the exodus of a number of you, I want you to hear the other reports, especially the report of the Mem-
bership Committee, we will again vary the program, as Mr. Stevenson is here, and hear the report of the Committee on Jurisprudence and Law Reform.

To The Indiana State Bar Association:

Your committee on jurisprudence and law reform submits the following report:

CODIFICATION AND REVISION OF INDIANA STATUTES.

There has been referred to your committee the matter of providing for a codification or revision of all of the statutory laws of Indiana.

The committee is of the opinion that some plan should eventually be worked out looking to that end. At present, however, there has just been issued the Revised Statutes of Indiana for 1926, which is now owned by most of the lawyers of the state.

It would be difficult to prepare a complete revision or codification of the statutes of the state which would meet with the approval of the legislature unless such codification or revision should be simply a restatement of existing laws in more succinct form.

One of the states has a plan by which the state publishes all the statutes of the state at the end of every session of the legislature. It has created the office of Revisor of Statutes whose duty it is to prepare on request bills for laws and to keep the revision and annotations of statutes up to date. A complete set of statutes as changed and revised is published in two volumes within about ninety days after the adjournment of the biennial sessions of the legislature. These statutes are handled by the state and are sold to lawyers at about five dollars. Session laws, also, are published.

Iowa publishes a complete set of statutes at the end of every four years.

Your committee believes that in time something like the plan referred to above may be worked out but it is not prepared at this time to make a definite recommendation on that subject.

The committee does recommend that the Association urge the legislature to provide by law for a committee of three capable and distinguished lawyers of the state who shall restate the statutory law as it is, condensing or combining statutes, cutting out obsolete or meaningless statutes or parts of statutes without an effort to state what the law should be. Then with a codified or revised set of laws the basis would exist for a systematic and logical development of statutory law.

LAW REGARDING TRANSFER OF CASES FROM THE APPELLATE COURT TO THE SUPREME COURT.

There was referred to your committee, also, for its consideration the question of modification or change regarding the matter of transfer of cases from the Appellate Court to the Supreme Court.

In view of the fact that the committee on legislation of the Association has recommended an amendment to the constitution providing for an increase in the number of Supreme Court judges your committee is of the opinion that it would not be advisable at the present time to recommend that any change be made in the law regarding the transfer of cases from the Appellate Court to the Supreme Court.

The committee does recommend a change in the law so as to give to the Appellate Court jurisdiction in all appeals in prosecutions for misdemeanors. Originally the Appellate Court did have such jurisdiction.
COURTS OF DOMESTIC RELATIONS.

The committee has had under consideration, also, the proposal referred to it of providing a court of domestic relations in some of the larger counties of the state.

The committee after due consideration is of the opinion that at present it would not be advisable to urge the creation of a separate court of domestic relations. It is thought that our courts with their general jurisdiction are better qualified to handle satisfactorily the problems arising out of domestic relations.

The committee does recommend the study and consideration of the laws in some cities whereby a court of domestic relations does exist but as a department only of another court of general jurisdiction; and in which department judges rotate as to service.

DECLARATORY JUDGMENTS.

There was referred specially to this committee the subject of declaratory judgments. The committee has given this subject some attention.

The reform as contemplated by such an act has been approved by the American Bar Association, the American Judicature Society, the Commissioners of Uniform State Laws and by the legislatures of a number of states who have enacted such legislation. It has been declared that the present system of court procedure has in certain respects become antiquated.

The declaratory judgment aims at abolishing the rule which limits the work of the courts to a decision which enforces or denies a claim or assesses or denies damages or determines punishment. The declaratory judgment allows parties who are uncertain as to their rights and duties to ask a final ruling from the court as to the legal effect of an act before they have progressed with it to the point where any one has been injured.

The procedure by way of declaratory judgment is known to the law of England, France, Spain and Germany and has been so for many years. In England, it has existed since 1858 with ever-broadening scope and increasing influence.

In all of our states we have always had bills in chancery to construe wills, to perpetuate testimony, to determine questions of title and the removal of a cloud. The declaratory judgment is but an enlargement in scope and advantage of such proceedings.

It has been said:

"The common law principle well established and for the most part adhered to for centuries is that no one may invoke the aid of the court until he has suffered loss or damage or until his rights are invaded and loss or damage presently threatened, and then the court proceeding becomes a legal battle between the contending parties, the one not only to establish his right and the breach of it but to magnify the loss or injury, the other to show that on rights has been breached and to minimize the loss or damage.

Heretofore there has been no method provided in the law whereby such conflict might be avoided."

It is contended that there may be a declaration of rights by a court at the beginning of a controversy before a breach has occurred.

Laws providing for declaratory judgments have been enacted in Massachusetts, Rhode Island, New Jersey, Connecticut, Kansas, Florida, Michigan, New York, Kentucky and Virginia.
The Commissioners of Uniform State Laws have recommended a form for Uniform Declaratory Judgments Act. We attach a copy of that form of Act to this report.

The Michigan statute on the subject of declaratory judgments was declared unconstitutional by the Supreme Court of Michigan in the case of Grand Rapids Railway Company v. Anway, 211 Mich. 592, 179 N. W. 350. There was a vigorous minority opinion upholding the act. The majority places its decisions upon the ground that a declaratory judgment is in effect, the decision of a moot question; that it is merely advisory in its character, and not final, because it does not authorize enforcement by compulsory process; and the statute calls upon the court to exercise non-judicial power.

It appears, however, that the Michigan decision does not have a high standing generally as a judicial decision.

The committee is favorably disposed to the enactment of such a law in Indiana.

SUPREME COURT LIBRARY.

It is a lamentable fact that Indiana does not make even reasonable provisions for the maintenance of the Supreme Court library which is used not only by the courts but by lawyers from all parts of the state and by many laymen. Indiana should be among the first and best of the states in this regard but it is far from that position.

There should be an appropriation of at least $5,000.00 annually for the purchase of books, and in addition thereto a sufficient fund to keep the books in repair and to pay living salaries to the librarian and assistant librarian.

The lawyers of the state should all assist in bringing about such a needed change.

PUBLICATION OF REPORTS OF APPELLATE AND SUPREME COURTS.

A few years ago the Association had under consideration the matter of the long delay in the publication of the reports of the Supreme and Appellate Courts. Vigorous steps were taken under the counsel and activity of a committee of the Association to bring the publication of the reports of our courts of appeal up to date.

Gradually the change has been made. Now the reports are published about as near up to date as is possible.

The committee feels that it may say with propriety, in fact that it should say, that such change of condition has been brought about and effected largely through the splendid work of our present Court Reporter, Mrs. Edward F. White, and her assistants.

Their work shows that a high degree of efficiency may be brought about by competent and faithful public officials.

COMMITTEE REGARDING APPOINTMENT AND NOMINATION OF JUDGES.

Your committee has had under consideration the advisability of providing for the creation and appointment of a committee of the Association to act in an advisory capacity in the appointment and nomination of judges of our state courts.

It is a well known fact that the appointment of judges in cases of vacancy and even the nomination of judges have been dictated and brought about largely by those in charge of the political party machinery of the state.
If a standing committee composed of members of high standing as lawyers should be created with duties to advise with the Governor or other appointing power in cases of vacancy or to advise with reference to nominations much would be done looking to the placing and keeping of most suitable men on the bench.

Of course the services of such a committee would be voluntary and their recommendations would not be compulsory or binding on the appointing power or nominating body but wholly advisory.

We believe that in most instances the appointing power or nominating body would like to have the advice and counsel of representative members of the bar as to appointments and nominations for judicial positions.

If a committee should be created with such duties we believe their advice and counsel would be sought; or if not sought voluntarily, then the services of such a committee should be tendered.

"AN ACT CONCERNING DECLARATORY JUDGMENTS AND DECREES AND TO MAKE UNIFORM THE LAW RELATING THERETO.

"Be it enacted:

"Section 1. (Scope.) Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declaration shall have the force and effect of a final judgment or decree.

Section 2. (Power to Construe, etc.) Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder.

Section 3. (Before Breach.) A contract may be construed either before or after there has been a breach thereof.

Section 4. (Executor, etc.) Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or legal relations in respect thereto:

(a) To ascertain any class of creditors, deviseses, legatees, heirs, next of kin or others; or

(b) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(c) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

Section 5. (Enumeration Not Exclusive.) The enumeration in Sections 2, 3 and 4 does not limit or restrict the exercise of the general powers conferred in Section 1, in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

Section 6. (Discretionary.) The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if ren-
dered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

Section 7. (Review.) All orders, judgments and decrees under this act may be reviewed as other orders, judgments and decrees.

Section 8. (Supplemental Relief.) Further relief ased on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

Section 9. (Jury Trial.) When a proceeding under this act involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.

Section 10. (Costs.) In any proceeding under this act the court may make such award of costs as may seem equitable and just.

Section 11. (Parties.) When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the Attorney-General of the State shall also be served with a copy of the proceeding and be entitled to be heard.

Section 12. (Construction.) This act is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respects to rights, status and other legal relations; and is to be liberally construed and administered.

Section 13. (Words Construed.) The word 'person' wherever used in this act, shall be construed to mean any person, partnership, joint stock company, unincorporated association, or society, or municipal or other corporation of any character whatsoever.

Section 14. (Provisions Severable.) The several sections and provisions of this act except sections 1 and 2, are hereby declared independent and severable, and the invalidity, if any, of any part or feature thereof shall not affect or render the remainder of the act invalid or inoperative.

Section 15. (Uniformity of Interpretation.) This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.

Section 16. (Short Title.) This act may be cited as the Uniform Declaratory Judgments Act.

Section 17. (Time of Taking Effect.) This act shall take effect ( )

ELMER E. STEVENSON, Chairman,
JAMES W. FESLER,
CHARLES M. McCABE,
DAN M. LINK,
THOMAS A. DAILY,
LOUIS B. EW_BANK,
JAMES J. MORAN,
HENRY M. DOWLING.
MR. ELMER E. STEVENSON: Mr. President, Members of the Indiana State Bar Association: The work of the Committee on Jurisprudence and Law Reform is more advisory, we take it, than of any other character. We may make suggestions from time to time as to what we think ought to be done in the way of legislation, but it is for the Legislative Committee, of course, to carry out, if it seems advisable, and if the Association so recommends, the recommendation of the Committee on Jurisprudence and Law Reform.

* * * Mr. Stevenson then read his prepared paper, with the following interpolations:

(1) The Committee has had this in mind, that it would be very difficult to prepare a complete set of statutes for Indiana that would meet with the approval of any legislature, especially if there should be recommendations for changes or revisions that would modify particularly the statute, so we had in mind this: that the best thing to undertake to do would be to have a committee of distinguished lawyers restate the law as it is at present without any modification or without any recommendations for modification, and then let the legislature adopt the statutes under the assurance of the Committee that there is no material modification in the statutes and then from that point we can proceed to modify and revise our statutes from time to time.

I may add also that we have in Indiana, under the statutes of 1925, what is called a reviser of statutes. I think there has never been anybody appointed to that position. It is hemmed about with so many provisions it is not practical, and I doubt if the statutes would be very helpful looking to a revision of the statutes. (Continued reading—“Law Regarding Transfer of Cases from the Appellate Court to the Supreme Court”.)

(2) May I add just this: You see I think clearly from what your Chairman has said that the purpose of such statute is simply to enable the people who want a contract construed, for instance, to go to a court if there is a controversy between two or more parties to a contract, that they don’t have to wait until a breach of the contract and damages ensue, but go into court, adversary parties, and have the contract construed by a court. We don’t see any reason why that should not be done with reference to ordinances and statutes, the statutes that provide that the municipality may be defended, if it is a municipality, and the state may appear by its Attorney-General if there is a question of the rights and duties of parties under a statute. (Continued reading—“Supreme Court Library”.)
(3) I understand that there is available for use for the Supreme Court Library and for the various courts about $3500 a year, and only about $2,000 of that is available for the purchase or repair of books. It isn't enough. Our library ought to be added to, ought to be kept in better condition, we ought to pay larger salaries, ought to pay salaries so we can put men in and keep them for life, so they will understand the duties of the office. Fortunately we have had good libraries, but think we could accomplish better results. (Continued reading—"Publication of Reports of Appellate and Supreme Courts").

Mr. Kirkpatrick was a member of this Committee.

May I add this word: We had it in mind that a committee on the last subject mentioned should not be larger than seven members, and that sort of a committee would be a useful committee in the matter of the selection of the matter. (Applause.)

PRESIDENT DIX: What is the pleasure of the Association with reference to the report of the Committee on Jurisprudence and Law Reform?

* * * It was voted, on motion by Mr. Ashby, duly seconded, that action on the above report be postponed until after the report of the Membership Committee has been heard. * * *

PRESIDENT DIX: We will now revert back to the regular order of business and hear the report of the Membership Committee.

To The Indiana State Bar Association:

Your Committee on Membership begs leave to submit the following report:

The Chairman has visited every congressional district but one, attending district organization meetings in all but two congressional districts, and has held meetings with the bars of 19 counties as well at the district meetings. In the district work and in most of the other, he was accompanied by the President, Mr. Dix and the Secretary, Mr. Baker.

Much valuable aid was given the Chairman by all members of the committee. Frank N. Richman of Columbus, Frank H. Hatfield of Evansville, Joseph G. Ibach of Hammond, Robert E. Proctor of Elkhart, Judge Robert W. Miers and Charles B. Waldron of Bloomington, James J. Farnan of Laporte, Wm. C. Coryell of Marion, President Dix and Secretary Baker, not members of the committee, have given effective aid.

Bloomington, Greensburg, Martinsville, Spencer, Salem, Petersburg, South Bend, Knox, Plymouth, Rochester, Warsaw, Winamac, Mt. Vernon and Rockport now have practically
the entire membership of their respective bars in this Association.

Brown, Ohio and Union counties are without membership in the Association.

More than 1200 personal letters were written. Expenses of about $65.00 have been incurred and annual dues from applicants for membership amounting to more than $2,250.00 have been collected. These financial results will be reported by the Treasurer in more detail.

During the year 123 members have been dropped for delinquency in dues by order of the Board of Managers. After dropping these delinquents and electing the applicants herewith reported the membership will stand at 1437. This leaves approximately 1800 lawyers in Indiana who are eligible to membership, who are not members, and whose membership should be procured.

We submit with our approval the following applications for membership:

Respectfully submitted:

1st Dist.—Henry B. Walker, Evansville.
2nd Dist.—John C. McNutt, Martinsville.
3rd Dist.—W. E. Clark, Bedford.
4th Dist.—Geo. L. Tremain, Greensburg.
5th Dist.—John M. Fitzgerald, Terre Haute.
6th Dist.—J. R. Hinshaw, Newcastle.
7th Dist.—Wm. A. Pickens, Indianapolis.
8th Dist.—H. L. Nichols, Winchester.
9th Dist.—C. H. Wills, Kokomo.
10th Dist.—Hammond.
11th Dist.—Michael L. Fansler, Logansport.
12th Dist.—Howard L. Townsend, Fort Wayne.
13th Dist.—I. S. Romig, South Bend.

WM. A. PICKENS,
Chairman.

Mr. Pickens: I feel like I want to add just a word or two in addition to the formal report. The first thrill that this Committee had was when Mr. Coryell went down to Bloomington and got Judge Meyers—Robert, the Beloved, as some of us call him, a man along in years, past seventy-five years old, to help make a campaign in Bloomington. Bob said, "I will do it," and in two weeks' time he had sent in the application of every lawyer in Bloomington, including some of the professors in the law school.
I had trouble getting started up in the Thirteenth District here. I asked Robert Proctor of Elkhart if he could not help me out, and we got in his car and went around to Plymouth, Rochester and Warsaw and got all the lawyers, and since that time he has cleaned up Elkhart.

Romig of South Bend has got every man in South Bend that ought to belong to this Association. Now, if the work is kept up by men like these that have been helping me, we will have ninety per cent of the lawyers in Indiana in the Indiana State Bar Association. (Applause)

* * * It was moved and seconded that the report be adopted* * *

PRESIDENT DIX: This carries with it the approval of the names, most of which, I think all of which, have been published from time to time in the Journal. Is there any discussion?

* * * The motion was carried * * *

MR. ROYSE: I think the report is very unusual. I think it merits something more than mere approval of this report. I think this Association is under tremendous obligation to the members of this Committee and the officers of this Association for this result, and I think the least we can do is to vote an expression of thanks and appreciation for the very serious and effective work that they have done.

I move that a resolution of thanks be adopted. (Seconded)

MR. PICKENS: I want to make a point of order, that so far as this motion applies to any officer of this Association who has done only his duty, it is entirely out of order. I am following the example of our beloved William A. Ketchum, who never was willing in this Association, or anywhere else, that a man should be thanked for doing his duty.

Now, this motion is very proper and should be adopted so far as it relates to those outside of the Membership Committee, and outside of the officers, but as to them, it is entirely out of order.

PRESIDENT DIX: The Chair will overrule the point of order and put the motion.

* * * The motion was unanimously and enthusiastically carried * * *

PRESIDENT DIX: The time has now arrived for the President’s Address, a duty imposed upon the President by the By-Laws, and an infliction imposed upon the Association likewise by the By-Laws. Mr. Pickens, I will ask you to assume the Chair, if you will.
* * * Mr. Pickens took the Chair, and President Dix presented his prepared address on “The Progress of the Law.” (Applause.)

See page 91 for address.

* * * After a short recess, the report of the Treasurer was called for, and was presented by Captain Salsbury, who then moved that the report be referred to an Auditing Committee to be named by the Chairman. The motion was seconded and carried * * *

* * * President Dix appointed as an Auditing Committee Mr. Joyce, Willis Roe, and Frank Hatfield * * *

PRESIDENT DIX: Now, after the report of the Committee on Jurisprudence and Law Reform, there was a motion, as you remember, to defer action until after the Treasurer’s report. If you will permit the Chair to suggest, I would like to say that the three committees which are to report next, together with the Committee on Jurisprudence and Law Reform, form a group of committees which have been working in conjunction on a legislative program, and the Chair would suggest that action and discussion on all of these reports be deferred until after the last report is heard. If there is no objection, that will be the procedure which we will adopt.

The next report will be that of the Committee on Legal Education. Mr. Ogden.

REPORT OF COMMITTEE ON LEGAL EDUCATION.

President Dix, at the beginning of his administration pursuant to the by-laws of the Association, appointed a committee on legal education consisting of seven members. The members of this committee are James M. Ogden, Chairman; Dean Paul V. McNutt, Bloomington; Judge Theophilus J. Moll, Indianapolis; Mr. Bert Beasley, Terre Haute; Judge James A. Collins, Indianapolis; Mr. Frank M. Richman, Columbus, and Mr. Richard L. Ewbank, Indianapolis.

The committee with the exception of two members, met at the City Hall in Indianapolis, on the 14th day of October, 1925, and pursuant to the request of the President, considered rules for admission to the Circuit and Superior Courts of Indiana. After due consideration, a set of rules was unanimously adopted. Later in the same day these same rules were adopted by the Board of Managers of the Association. The rules were subsequently printed by the Association and distributed to the Judges of the various Circuit Courts throughout the State and also to all the local bar associations of the State.

These rules have been adopted in at least a score of the counties of Indiana and many more are contemplating their adoption. They will be furnished by the Secretary of the Association upon application.

These rules provide for two examinations in writing, to be held in the various counties of the state each year, one on the first Monday in February, and the other on the first Monday in July, the questions being prepared and furnished by the Indiana State Bar Association. The ex-
amination is in the following sixteen subjects: Contracts, Torts, Code Pleading, Indiana Code, Equity, Evidence, Private Corporations, Real Property, Sales, Negotiable Instruments, Agency, Wills, Criminal Law, Legal Ethics, Trusts, and Constitutional Law.

One examination has been held, that is, on the first Monday in July, in the various counties of the State. Questions were sent to the Judges of the Circuit Courts throughout the State to be turned over to the committees for conducting the examinations as contemplated by Section 1033, Burns' Annotated Indiana Statutes 1926. These questions were prepared by a member of the Committee on Legal Education and were carefully gone over and revised by a majority of the members of the Committee.

Some of the members participated in the case of State ex rel. Harrington vs. Fortune, Judge, decided by the Supreme Court on March 9, 1926. In this case the Supreme Court dismissed the request of Joseph Harrington of Jeffersonville for a writ of mandate to compel the Circuit Judge of Clark County to permit Harrington to have the rights and privileges of a practicing attorney in said court, holding that the said Judge had the right to seek an inquiry of the moral character of the applicant for admission to practice in his court instead of admitting him without the inquiry.

Some members of the Association participated in the matter of the application of William Axton, in the Circuit Court of Vanderburg County. In this case the jury found in substance that a person, who insists upon being admitted to the bar and who is not fitted by training to practice law, is not of good moral character. The jury in this case answered interrogatories that Axton was not of good moral character under facts showing that he was not fitted by training to practice law.

An application and motion to admit an applicant to practice in the Marion Circuit Court was filed on the first of this month and Judge Chamberlain of the Marion Circuit Court refused to rule upon the application until the matter had been referred to the committee on admissions, appointed by him earlier in the year. When this case comes up for action next fall, the Indiana State Bar Association will assist in upholding the uniform admission rules adopted by it and the orders of the court relating thereto.

It is believed that the action of this Association respecting the uniform admission rules has had a wholesome effect.

Respectfully submitted,

JAMES M. OGDEN, Chairman.

(Applause.)

President Dix: Next in order is the report of the Special Committee on Reorganization of Supreme and Appellate Courts. Judge Shea, the Chairman of that Committee, is unable to be present this afternoon due to a death in his family, and I take it that perhaps Mr. Ashby has the report. Is that correct?

Mr. Ashby: Judge Shea expects to be here tomorrow, and I understood him to say that he had requested you to postpone the making of that report until that time.
PRESIDENT DIX: He wired me he wouldn't be here today. The report will be deferred.

The next in order then is the report of the Legislative Committee, Mr. Simms.

To the Indiana State Bar Association:

Your Committee on Legislation, to whom was specially referred the following matters:

(a) The amendment of the Constitution respecting admissions of lawyers to the bar and the method to be employed in the submission of such amendment;
(b) The amendment of the Constitution respecting the membership and tenure of office of the Supreme Court;
(c) The approval of certain proposed uniform legislation heretofore approved by American Bar Association; respectfully begs leave to report upon said matters in the order stated.

Admission to the Bar.

(a) 1. We recommend that this Association approve, sponsor and urge the legislature to approve and submit the following joint resolution:

"JOINT RESOLUTION NUMBER — (SENATE)

A Joint Resolution to Amend Section XXI, Article VII, of the Constitution of the State of Indiana Relating to Admission to Practice Law.

"Resolved by the Senate, the House of Representatives Concurring, That the following amendment be and is hereby proposed to the Constitution of the State of Indiana, to-wit: Amend Section XXI, Article VII, so as to read as follows, to-wit:

"Section XXI. Every person of good moral character, being a voter, shall, with the approval of the Supreme Court according to such rules and regulations as it may prescribe, be entitled to admission to practice law in all courts of justice."

(b) 2. Your Committee further reports that it has given careful consideration to the method to be employed in the submission of the foregoing amendment.

By the Act of 1911 provision is made for the submission of constitutional amendments at general elections upon party tickets so that a straight party vote at such general election will be a vote in the affirmative for the amendment submitted with provision that the voter by voting a mixed ticket can vote against such amendment. This act does not seem to have been construed by the courts.

We find that in the states of Ohio and Nebraska, the constitutions of both of which relating to this subject are identical with our own, the Supreme Court has held that such a legislative act providing for the placing of an amendment on the party ballot in such manner that a straight vote under the party emblem would be a vote for the amendment, with provisions that it could be voted for or against precisely the same as candidates are voted for or against where the voter desired to vote a mixed ticket, did not violate the Constitution and was entirely legal from every point of view. The Supreme Court of the State of Iowa, the con-
stitutional provision of which upon this subject is likewise identical with ours, holds to the contrary.

Your Committee, upon careful consideration of the provision of our Constitution relating to amendments in connection with the history of its adoption and the construction placed thereon by our Supreme Court in *Ellingham v. Dye*, 178 Ind. 336, have reached the conclusion that it was not the intent and purpose of the framers of our Constitution to provide for its amendment in the manner suggested, and that the lawyers cannot afford to recommend a method of submission not in accord with such intent and purpose.

Your Committee, therefore, recommends that the foregoing amendment, if concurred in by joint resolution of the legislature in manner and form as provided for by the Constitution, should be submitted to the electorate for adoption or rejection in the usual and regular way, as clearly contemplated by the Constitutional Convention. If a concerted action of the bench and bar of Indiana to remedy what is conceived to be a substantive evil in admissions to the bar proves unavailing, then and in such event it seems to us we should forego the remedy.

**Supreme Court Amendment.**

(b) We recommend that this Association approve, sponsor and urge the legislature to approve and submit the following joint resolution:

"Section 1. Be it Resolved by the General Assembly of the State of Indiana, That Section 2 of Article VII of the Constitution of the State of Indiana be amended to read as follows, to-wit:

"The Supreme Court shall consist of not less than nine nor more than fifteen judges, a majority of whom shall form a quorum. They shall hold their offices for a period of ten years if they so long behave well."

We also recommend that this Association approve, sponsor and urge the legislature to approve and submit the following joint resolution:

"That Section 3 of Article VII of the Constitution of the State of Indiana be amended to read as follows:

"The State shall be divided into as many districts as there are judges of the Supreme Court; and such districts shall be formed of contiguous territory, as nearly equal in population as, without dividing a county, the same can be made. One of said judges shall be elected from each district, and reside therein, but said judges shall be elected by the electors of the state at large.

"The said court may sit in divisions or in banc under such rules and regulations as the court may prescribe."

**Uniform Legislation.**

(c) There were also referred to this Committee, for its consideration, certain proposed bills approved in conference of Commissioners on Uniform State Laws, and covering the following subjects:

Desertion and Non-support of Wife and Children by Parents, or Either of Them;
Uniform Sales Act;
Uniform Conditional Sales Act;
Uniform Partnership Act;
Uniform Limited Partnership Act;
Uniform Bills of Lading Act;
Uniform Fraudulent Conveyance Act.

As to the above act relating to desertion and non-support of wife or children by parents, or either of them, we find that our present statute appears to fully cover every substantive provision contained in said proposed uniform act.

As to the other proposed uniform acts, we report that the Committee did not have at its command sufficient time after the reference to enable it to make intelligent recommendations upon them, or either of them.

Another subject which your Committee has had under consideration was not pursued far enough to enable it at this time to make definite recommendations. It feels, however, that it will not be improper to offer some suggestions in connection therewith for the consideration of the Association. Perhaps no subject is so frequently spoken of in public and in private as the lack of the enforcement of law, and perhaps no officer in our political organization is charged with greater responsibilities and higher duties in the enforcement of the law than prosecuting attorneys. In our present system the salary and compensation of prosecuting attorneys in judicial circuits having a population of not less than seventy-one thousand is Five Hundred Dollars per year plus the fees allowed by statute.

We take it that it goes without the saying that seasoned lawyers cannot ordinarily be induced to assume the great responsibilities of this office for the compensation which it affords. Moreover, in the opinion of your Committee, the compensation of prosecuting attorneys should be placed wholly upon a salary basis. The fee system has never been satisfactory, nor in the very nature of things can it be. We are not unmindful of the fact that under our present system many young men of natural ability and educational attainment have been chosen to administer the affairs of this great office and have afterward developed into excellent outstanding lawyers. But the fact remains that this office, the responsibilities of which cannot be overestimated, is, in a majority of the circuits of our state, filled by young men just starting in the practice, untrained in the law and inexperienced in the ethics of the profession, who make it a stepping stone at the beginning of their career.

Almost without exception, case after case arises in each of the circuits of the State where the trial judge feels it incumbent upon him to appoint experienced lawyers to assist in the prosecution of the pleas of the State. It is perhaps entirely safe to say that the compensation of these special assistants to the prosecutor, when added to the salary and fees now received by the prosecutor, does exceed an amount which would be more than adequate to command the services of a seasoned lawyer as prosecutor in each of these circuits.

It may be true that under the conditions that prevailed when our present system was adopted the salary awarded was sufficient to command the services of the average practicing lawyer. Whether that is true or not, no argument is needed to demonstrate that that salary and compensation will not serve that purpose today.

It has occurred to your Committee that a system might be worked out by which the prosecuting attorney could also be made the local adviser of the Board of Commissioners and of county officers with respect to all county business, and thus dispense with the present practice, now almost
universal, of employing at a fixed salary what we now call "county attorneys."

The work of preparing a bill along the lines suggested here, that would grade and apportion the salaries upon the basis of population among the judicial circuits, would require facts and data which are not at the command of your Committee. If the Association should agree with this Committee that an entire change in our system is urgently required, then it would seem well worth while to appoint a special committee of the Association which would be solely charged with the working out of a new plan and the preparation of a bill that would embody it. In our judgment this should be done and we therefore recommend it.

Respectfully submitted,

DAN W. SIMMS,
WILLIAM J. CRAIG,
JOSEPH H. D. SHEA,
CHARLES M. McCABE,
FRANK H. HATFIELD.

MR. DAN W. SIMMS: Mr. Chairman, you observed upon the program these four special committees. The subjects were made substantially to one general main matter, and it is in view of that fact that many observations that this Committee would have been glad to make, have been made unnecessary because the whole subject has been covered by the four reports. The report that this committee desires to make is in respect principally to the subject of admission to the bar and reorganization of the Supreme Court.

* * * Mr. Simms then presented his prepared report with the following interpolation:

I should say here that the Committee collaborated with the Committee on Reorganization of the Supreme Court, of which Judge Joseph H. Shea is Chairman, and I had a letter last night from him saying that on account of a death of a member of his family he could not be here, but unless we received a wire to the contrary he would be here tomorrow afternoon. (Reading—"We recommend that this Association", etc.)

* * * *

(2) I desire to say that there was great unanimity in the opinion of the members of the Committee that something ought to be done. The Committee was not unanimous upon the subject that this particular method should be adopted. One of the members for whom the rest of them have the most supreme respect had another plan in mind, and he could not see his way clear to join in this report. We have been hoping that he would be able to present his views in another report, and I am informed by him that he has not had opportunity to do that. We are hoping, however, that at this session there may be opportuni-
ties for his views to be stated by him so that the Association may have the benefit of those views.

We take it for granted, the members of the Committee concurring in this report, that it will be considered by all, that some method has to be adopted to accomplish an easy and a complete and effective administration of justice through our court of last resort in Indiana.

I think it was the consensus of the majority of that Committee that this was the best method presenting itself, and that it would be better to make a supreme court large enough to transact all of the business that would ordinarily go to the court of last resort, to make that a supreme court rather than have an intermediate court.

We are impressed with the fact that this is a timely occasion for this body, for all lawyers in Indiana, to do whatever we can find within our power to do that will put the court where the Constitution of Indiana intended it should be. Now, we are fond of saying that our government is divided into three coordinate and coequal branches, and in a sense, that is true, but there is a sense in which that is not true.

The executive and legislative branches of government are more nearly political in their nature than is the judicial arm of government. When the fathers created the Republic—and it was but a short time after that republic was created until our Constitution of 1816 was adopted—while they undertook to set off with checks and balances these three divisions of government, they did something more; they put the court back there as a guardian angel at the gate, on which the wave of passion and prejudice and excitement ought not to have any effect. It was to stand firm like the Rock of Gibraltar, to determine the law as the law is, without respect to what the desires, political or otherwise, of the body of the electors of the state might be. Its highest function is its nature as a guardian angel of republican representative government, and so we are urging that a Supreme Court in Indiana be created with membership sufficiently large that it can take care of and dispose of all of the cases that ought to go to the court of last resort in our state, and thus administer justice.

Now, there is another sense in which it seems to me that the courts stand a little higher than do its sister branches or coordinate branches of government. There is no branch of government to which the citizens comes more often nor in which the citizen is more nearly and directly interested than the judicial branch. It decides the law, if it discharges its duty. It measures the rights of the citizen and it enforces those rights. It holds aloft the scales of justice and administers those rights that
are sacred to us all, standing there uninfluenced, unaffected by our daily opinion or our daily notions or prejudices or passions or excitements, and it is to that branch of government that citizens throughout the state are constantly going to have these rights, the dearest known to mankind, measured, safeguarded and administered.

Every generation, all of the property of the great state of Indiana devolves through the circuit court, and so I say that that branch and that arm of the government is more important and it touches more keenly and more closely the citizen in all of his rights than does any other branch of the government. It is for these reasons that we think the creation of a Supreme Court sufficiently large to discharge the duties that may come to it, should be created instead of having an intermediate court. We think that not only that, but that everything that can be done should be done to enshrine in the hearts of the citizens this branch of civil government, and to recognize that, free from all our fits of passion and prejudices and excitements, it shall stand there as a stone wall, doing its duty. That is because in the creation of our government our forefathers boasted they were creating a government of laws and not of man, and it is through this branch of government that that principle must be brought out and maintained and preserved. (Continued reading—“Uniform Legislation”.) (Applause)

PRESIDENT DIX: Will the Association consider these reports at this time or wait until we have the report of the Committee on Reorganization of Supreme and Appellate Courts, by Judge Shea tomorrow?

* * * It was unanimously voted that the consideration of the reports be deferred until the report of Judge Shea is before the convention * * *

PRESIDENT DIX: These reports will be taken up at the afternoon session tomorrow, immediately following the address by Mr. Lewis.

* * * Announcements—Mr. Baker * * *

MRS. WHITE: I wish first to express my great pleasure at the vote of appreciation you have made in regard to the work of the office of reporter. I would not ask for even a moment of your time today except for the fact that I am obliged to leave tonight for Denver.

I merely want to say to you at this time that No. 83 Appellate is ready, and No. 196 Supreme is in the bindery, and we are literally up to the courts.
I wish also to state in behalf of my deputies that we are in readiness, if this Bar Association wishes it, to furnish to you advance sheets of the opinions of the Supreme and Appellate Courts. We are in such shape that we can now furnish notes of those cases as soon as they are delivered, as well as we could sixty, eighty or ninety days after they have been handed down. Those advance sheets would be official to the extent that they would have the same head notes prepared with the same care and the same consultation with the judges of the two courts as they do have in the permanent volumes. They would be unofficial to the extent that they would be subject to transfer from one court to the other, subject to change on rehearing by either of the courts before final publication. That is exactly the same hazard that you now have in using the reports published in the Northeastern Reporter, so that they would be the same.

I merely state that we are in readiness to take that work without any additional effort upon our part if you wish it.

I would also suggest, if you do so desire, that you refer it to the Legislative Committee to work out the details of such legislative authorization as is necessary. (Applause)

MR. DAVIS: I move that Mrs. White, the reporter of the Supreme Court, be requested to proceed with the furnishing of advance sheets of the opinions of our higher courts and the various lawyers throughout the state may want to subscribe to it, and that the Legislative Committee of the Association be instructed to cooperate with her to that end.

I think it would be a great help for all the lawyers of the state to have these advance sheets of opinions mailed to them upon their rendition. We have the Northeastern Reporter; I think we ought to have the official reports mailed to lawyers the same as they do in Michigan and other states.

MRS. WHITE: I am afraid unless I have further information that it would require legislative authorization to do that. It may be in the wisdom of your Legislative Committee you can find some way in which that can be done without any action of the Legislature. If so, it makes no difference to me, but it is my understanding that some action will have to be made.

PRESIDENT DIX: The motion appears to be lost for want of a second.

Is there any other business to come before us? If not, the meeting will stand adjourned until 6:30 in this room.
PRESIDENT DIX: Ladies and Gentlemen, it is with a mixed feeling of regret and pleasure that I announce to you the inability of the Honorable Nicholas Longworth to be present this evening, a feeling of regret that you are not to see and hear the Speaker of the House of Representatives, and a feeling of pleasure that in his place we have secured a gentleman who may not be so well known politically as Mr. Longworth, but who in other fields is perhaps much better known.

Mr. Eugene H. Angert of St. Louis is a lawyer of prominence, a scholar, a writer, and above all I think we would say this hot evening is a humorist of considerable prominence, dating back, I may say, to the time when perhaps you all may have read his article in the North American Review entitled, "Is Mark Twain Dead?" This article was written prior to the death of Mark Twain, and attempted to prove, and did prove in the minds of many, that Mark Twain really was dead and that his publishers were carrying on under his name the literary writings of Mark Twain, and that the recent books which were being published under his name were not in fact written by Mark Twain, but written by someone whom his publishers were substituting for him. This article in the North American Review brought out from Mark Twain the famous statement (I don't know that I can give it in his exact words) "When I read the article, I knew that it was greatly exaggerated."

I have great pleasure in introducing Mr. Eugene H. Angert, of St. Louis, who will address you on the subject, "The Law is not a Jealous Mistress". (Applause.)

See page 105 for address.

* * * Mr. Angert delivered his prepared address * * *

(Enthusiastic Applause.)

PRESIDENT DIX: I think we can all agree that Mr. Angert has proved his case. I think we can also agree upon a thing which Mr. Angert in his modesty, of course, would not mention, and that is that he has proved it by his own living example.

We have this evening a distinguished gathering of Past Presidents of this Association. They are all sitting at this table, all of the living Past Presidents, with a very few exceptions. I notice Mr. Hough just came in and should be over here.
I am going to turn this part of the meeting over to the oldest living Ex-President here in point of service, Mr. Donald Fraser, who will introduce the Toastmaster to respond to the toast, Our Ex-Presidents. Mr. Fraser. (Applause)

MR. FRASER: Mr. Chairman, Ladies and Gentlemen: Twenty years ago tonight I gave the Bar this sentiment: The Supreme Court of the United States and the courts established and ordained by the Constitution of the United States and the several states: May they never be shorn of their power or so constituted that they may do aught but justice between all manner of persons, without fear or favor, and in the instance where the law does not cover the right that they may render such judgment as seemeth just.

This was twenty years ago when the authority of the courts was assailed by a doctrine that their judgments ought to be referred to the multitude of men after they had been pronounced. It was an evil that had as its advocacy from the highest place in this nation, one of the most brilliant and accomplished abbots beyond reason who ever was beloved on this earth. We fought this doctrine. We destroyed it everywhere. We fought it in the open. We deemed that a political philosophy that would destroy a coordinate department of this great nation.

I take the liberty, then, of an ancient statesman to remind you young gentlemen that if intolerance obtains the supremacy in America, there will be no Bar Association and no independent ladies and gentlemen. Intolerance in any form is destructive of government. I would warn you that intolerance in meeting intolerance makes two evils that do not equal any one right.

I had a friend who went away across the ocean, across the world to the eastern edge. In his language, he went “every place they kept open”. (Laughter) He said among the other marvelous things he saw on his journey was a merchant who had a caravan sprawled for half a league in a green tongue that licked out of the desert. He was the richest merchant in the Orient. He had ships on the seas and caravans on the land. He said he thought he would ask his advice. He combed his beard with his fingers and he said, “Take not the way of a stranger unless it be also the track of a caravan.”

There is no disguising the fact that we are met here with another assault on the independence of the courts, and the way to meet that is not by like intolerance. Open daylight and sunshine destroys all evil things in this land. We must beware. We are proposing an amendment that will give the judges ten years tenure of office. We must beware that no class of persons by religious or racial prejudice encumber the courts with unfit
men, but suppose that phenomenon did happen, and we dare not openly charge that they were unfaithful to their duty as officers of this republic; can you imagine the condition that we would then be in? I do not debate that question, but it is worthy of consideration. It is the case of every man, woman and child in this republic. It affects us all, and it ought to be our prayer that God would enlighten the men whose duty it is to act in this hour of peril to western civilization itself.

Now, they appointed me here to introduce Dan Simms. That is what they wanted me to do. There is no doubt in the world but that they selected me because I, by discipline, do what I am told. That is a good sporting proposition, for me to introduce Mr. Simms. He answers Bret Harte's qualifications of a friend—I know all about him and still like him.

Mr. Simms has been more fortunate than the men that Mr. Kipling saw. He saw great men whom nobody recognized as great. They passed through the world and went to their graves. Nobody knew it in their neighborhood. They saw some of those in Bible times. They had honor everywhere but in their own countries. Mr. Kipling said that

"The great of the earth pass through the halls of time,
Stately and grand,
The little men climb to a place on the wall
To see the gods of the earth pass by.
The great of the earth pass through the halls of time,
Stately and grand they pass.
The little men say, "We wait for the great of the earth to pass.
These are our brothers passing by."

Mr. Simms has been more fortunate than that. He is a great man and all of his associates know it, great by the arduous greatness of things done. In four years when his health failed, he went to California and went to the head of this profession. We have him here now to make a speech. Make a good speech, and a short one! (Laughter and applause)

Mr. Simms: Mr. Toastmaster, Ladies and Gentlemen: If I had a speech in my system, that would have scared it out. I don't know when I have suffered as much embarrassment as I have in the last five minutes. I presume without doubt that is the act of a Scotchman, to get up and talk half an hour introducing a man, and then insist on his making a short speech. (Laughter)

I am like you, Mr. Angert, I am a substitute. We have the scheme of having the Past Presidents of the State Bar Association, now living, sit at this table.
When this first came into the mind of our President, he had in mind that William P. Breen, that outstanding lawyer and beloved friend of us all at Fort Wayne, would perform the service which subsequently was wished on me. It is the regret of all of you, as well as myself, that Mr. Breen was unable to be here, and so at a late hour I was told I must respond at this meeting to the toast, Our Ex-Presidents.

I did not know then, I have not been able to learn since, and I don’t know now, what that means or anything about it. There is nothing in the term that will disclose, Mr. Fraser, what I should or ought to say under that head. I rise very much, I presume, like Daniel Webster did when he was at a banquet enjoying himself, at a time when dinners were dinners, and the toast was sprung upon him just before he rose from his seat. “Mr. Webster will now respond to the toast, the public debt.”

With some trepidation and with some difficulty, he pried himself out of the chair, and bracing himself on the table, got to his feet, and with a little uncertainty said, “Public debt? Public debt? How much is the damned public debt?” (Laughter)

I am like the little colored boy down in Virginia who was trying to take the examination under the grandfathers’ laws. The grandfathers’ made it impossible, if properly worked, for the niggers to vote at all, but in one locality they were allowed to, and the white people were holding classes and coaching the negroes so that they could go and vote. One who stood at the head of his class, went up the day before election, proud of the fact that he had been trained and coached until he felt quite sure he could pass that examination. The first question was, “Sam, who was Thomas Jefferson?”

“Why, Mr. Thomas Jefferson, he was the author of the Declaration of Independence. He was from Virginia, sir.”

“Very good. Well, Sam, who was George Washington?”

“Why, George Washington, he was the first President of the United States. He was from Virginia.”

It began to look as if Sam were going to make the examination.

“What is the meaning of the word Aurora Borealis?”

“What did you say the lady’s name was?”

“It isn’t a lady at all. I want to know the meaning of the word Aurora Borealis.”

“How is that word pronounced again?”

“Aurora Borealis. What is the meaning of it?”

He hesitated. “Come on, now, Sam. You know the meaning of that word.”

“Yessuh, I know the meanin’ of that word. That means this niggah ain’t goin’ to get to vote.” (Laughter)
But I was regularly and legally chosen to substitute here. I am somewhat like the judge from Tennessee who was called down to Baltimore to try an admiralty case in the district court down there. He went down. When he got there here were two or three firms of lawyers on both sides talking about both sides of the case. He never had had a case like that in his life, so before he started, he said, “Gentlemen, it was a mistake, of course, to appoint me and send me to try an admiralty case. I have never had one; haven’t the slightest conception of what would be involved, no knowledge at all, no experience, but I have been appointed to try this case, and I am going to try it. I only hope ‘there will be no moaning at the bar when I put out to sea.’” (Laughter)

So, I am bound to respond to the toast, the Ex-Presidents of the State Bar Association of Indiana.

Seriously speaking, I have felt highly honored and supremely delighted if I had been notified last spring so as to have enabled me to prepare a short, snappy extemporaneous address upon this subject. It is a subject worthy of the eloquence and the highest tribute of any man.

Among these are the following, leaving out my own illustrious name: William P. Breen, Charles L. Jewett, Donald Fraser, the canny Scot who claims to stand at the head of the clan to which I belong, who usurps every right I have in my own house; Merrill Moores, whom I had the honor to follow; Samuel Parker; Frank E. Gavin; John L. Rupe; Thomas E. Davidson; William A. Hough; Inman H. Fowler; Judge Oscar H. Montgomery; Elmer E. Stevenson; Charles H. McCabe; Cassius C. Shirley; James J. Moran, a galaxy of names of which this Association has just right to be proud.

These men it has been my good fortune to know and respect and love. These men whom I have just named are outstanding lawyers of the State of Indiana who somehow have impressed themselves upon you as the greatest legal body in the State, that you chose them respectively as your leaders from year to year, men worthy of the honor that was thus conferred upon them.

I am going to make this speech short. I cannot at this time in these hours of wilted collars, take the time to follow the splendid address that we have heard, one of the most remarkable speeches it has been my privilege to listen to, by taking up these men as they should be taken up individually and talk to you of their lives and their characters and their accomplishments at the bar. I would be proud of the honor if I had had the time to prepare an address that would have been worthy of the occasion.
I am going to say in conclusion what I have said once before about Sam Pickens, whose eightieth birthday we celebrated but a short time ago, these men are men, manly men, gentlemanly men, lawyers in the highest sense of that term, and if I had a score of boys, I would ask no man to pass laws to make them good. Rather would I crave that they should know these men, intimately know them and love and respect them, and have the benefit of their precept and their example than all earth besides. These are the men, the ex-Presidents, the subject of this toast to which I am trying to respond in these few desultory remarks. (Applause)

PRESIDENT DIX: This concludes the banquet program.

ADJOURNMENT

FRIDAY MORNING

July 9, 1926.

The meeting was called to order at nine-thirty at the Pottawatomie Country Club, President Dix presiding.

PRESIDENT DIX: The first thing on the program this morning is the report of the Committee on Alien Citizenship. Honorable Claude E. Gregg, Mayor of Vincennes, is the Chairman of that Committee. Mr. Gregg wrote me that he would be unable to be present, but stated that he would have a report made by one of the other members of the Committee. Is the person present who is to make that report? This is a new committee which was appointed late in the season and they have very little to report, so we will pass that.

Next is the report of the Committee on Constitutional Education, Mr. James A. Van Osdol, Chairman.

* * * Mr. Van Osdol read his prepared report * * *

July 9, 1926.

To the President and Members of the Indiana State Bar Association:

Your Committee on Constitutional Education for its fourth annual report submits the following:

To make anything approaching a detailed report of the work of this committee during the year just closed, would be largely a repetition of its report made last year.

There is convincing proof that the work is growing in favor and increasing in scope to an extent not only gratifying to those participating, but most reassuring to those who have been concerned lest the spirit of indifference to the principles which underlie our government might be the symptoms of a fatal malady in our body politic.
The part taken in this work by the various civic and patriotic organizations which heretofore gave it endorsement, was quite as general as last year.

A growing interest on the part of the general public is evidenced by the increased attendance on the occasions of the oratorical contests in the local units, and the greater space given this work in the columns of the local papers.

That the Indiana State Bar Association is now definitely behind this program in a concrete way, is as should be, and that is doing much to make this movement effective.

The progress made in the past year in increasing the membership and extending the activities of this Association in fostering the organization of District Bar Associations and through them County Bar Associations, has already been pointed out.

The district managers for the year just closed are:
1st District—Richard Waller, Evansville, Ind.
2nd District—John C. Chaney, Sullivan, Ind.
4th District—Edward S. Roberts, Madison, Ind.
5th District—John M. Fitzgerald, Terre Haute, Ind.
6th District—Gath P. Freeman, Richmond, Ind.
7th District—William P. Evans, Indianapolis, Ind.
8th District—Harry Orr, Muncie, Ind.
9th District—W. H. Parr, Lebanon, Ind.
10th District—Joseph G. Ibach, Hammond, Ind.
11th District—Robert H. Van Atta, Marion, Ind.
12th District—William Ballou, Ft. Wayne, Ind.
13th District—I. S. Romig, South Bend, Ind.

While in a few instances this organization has had to look to some person outside the legal profession to serve as county chairman, it is worth noting that this year, the organization was so far complete that there was a chairman in every county. There were but two counties in the state, in which no attempt was made to participate in the National Oratorical Contest.

The Indianapolis News, again this year, furnished the clerical force for enrolling and directing the contest throughout the State, and supplied the money for paying the awards in the state finals.

In our report last year we called attention to the fact that all district and county awards should be reduced one-half in amount. That step was taken in the belief that since this work was first inaugurated, the legislature having made the teaching of the Federal and State Constitutions in the public schools compulsory, there was less excuse now for relying on the size of the award as a means of attracting attention to the subject.

The wisdom of that course appears to be justified by the evidences of increasing interest above pointed out, and the further fact that the number of schools enrolling this year was fifteen per cent. greater than last, and the number of pupils who to some extent participated, was proportionately greater.

In its report last year, your committee quoted from its two preceding reports, and that matter we again include in this report, merely to show that this committee has from the first adhered to a definite plan, which has been justified by the results, and which we would like to more firmly impress on the minds of those members of the profession who, while giving the movement a friendly nod of approval, have not felt called upon to give
it the active support which they so readily admit it deserves. And, that
our attitude toward the schools may not be misunderstood, we again quote
the following:

"With the teaching force thus stimulated and encouraged
in study and research along this line, and with an awakened
public interest, such as we believe will result from the proper
and intelligent presentation of this subject before the various
clubs and civic organizations, there will be created a demand
for closer attention on the part of our public schools to the
teaching of those subjects which lie at the foundations of an
enlightened and loyal citizenship, and thus help in re-estab-
lishing the Constitution of the United States and of our own
state, in the minds and the hearts of the people. * * *

"With the student life in our schools, and the numerous
individuals that have thus been drawn into sympathetic touch
with this effort to study our Constitution, all interested, we
confidently look for good results. With public interest thus
awakened, and with the student life thus stimulated, and with
those two forces acting and reacting upon each other, we can
say to those who fear that constitutional government is in
peril, that in the schools of America are being laid the foun-
dations of our future citizenship—in truth 'the schools of
America must save America.'

"From the first this committee has appreciated the danger
of creating on the part of school officials and teachers the
impression that this organization was seeking to intrude
itself into the teaching profession by telling it what to teach.
Such an attempt on our part would have been resented and
very properly so."

We trust we have not been misunderstood.

Perhaps the extent to which the members of the legal profession have
been willing to serve actively in carrying out this program, has been as
great as we had any reason to expect, considering the short time it has
been under way. Your committee respectfully submits that the duty
involved is primarily the lawyer's, and we express the hope that as time
goes on and the nature of the work becomes better understood, the sup-
port from the members of this profession will be what it should. In thus
speaking to the profession at large, we do not want to minimize the
credit due those of the profession who, as district managers, county
chairmen and others, have responded to the call to assist in making this
movement state-wide; they have all rendered a valuable service; their
only reward being the consciousness that in thus discharging the obliga-
tion taken when admitted to the profession, they have at the same time
rendered to society a service that is invaluable.

In all this, it is not saying too much, to say that, in this effort on the
part of the Bench and Bar of Indiana, the schools have met us more
than half way. The interest on the part of the schools is all that could
be expected.

Your committee has had occasional calls from teachers and students
for literature relating to the Constitution, and more than once the inquiry
has been "Why not have a text book on the Constitution if it is to be
taught in the schools?"
On these two points your committee calls attention to the standard of excellence that has marked the work produced by these students in their essays and orations, and all without the aid of a text book on the subject; they have gone to the libraries and other sources, and in all probability their search has led them into fields much wider and richer in material than if they had depended upon a text.

With the teacher the case is different. It is no reflection on our educational institutions that maintain teachers' training departments, to say that there has been no well defined attempt to equip the teachers for this particular work. Until now, there has been no popular demand for it, and the teacher who is now called upon to teach this subject, very properly feels the need of some general outline or abridgement of the subject that will enable him to give general and intelligent direction to the student who wishes to participate in the oratorical contest, and is ready to make the necessary research.

This might be accomplished by a comprehensive presentation of it in such form as to give to the teachers in their reading circle work, and their institutes, questions for investigation and discussion, that would tend to put the teacher in easy touch with the subject.

The question of a suitable text book on the Constitution may well be considered in light of this suggestion—if due credit be given in History, Civics, English, Composition and Public Speaking, for all work done in preparing an essay or an oration on the Constitution, students will not feel that the effort is time lost, and a teacher thus aided in giving intelligent direction to a pupil, will not feel that his burden has been increased by an addition to the school curriculum, and it would seem that all of this may be done without the aid of a text book.

All that has been said in this report up to this point, relates to this work as carried on in Indiana.

It is being carried on in practically every state in the Union. It has the endorsement of the American Bar Association.

The National Oratorical Contest which is made possible through the financial support given it by twenty-six of the major newspapers of the country, of which the Indianapolis News is one, all acting under the direction of Mr. Randolph Leigh of Los Angeles, California, have made it possible in three short years to make this work national in its scope. In this, its third year, it takes on an international phase. The schools in England, France, Germany, Canada and Mexico, encouraged and supported financially by certain newspapers in those countries, are pursuing a similar course, and their representative school orators will appear in Washington on October 15th, and there give their views of self-government, each interpreting his own governmental institutions in his own language.

Your committee feels confident that the same newspaper support will be given this work next year, that was given during the year just closing, and that the members of the bar in this state, and the various cooperating organizations and individuals will be requested to carry on.

Your committee recommends certain changes which it believes will materially aid this work.

RECOMMENDATIONS.

1st. In addition to the cash awards that will be offered to those winning in the county, district and state finals, this Association should offer a series of medals, as follows: To the state champion, a gold medal; to each district champion, a silver medal; and to each county champion, a
bronze medal. These medals should, in every instance, be the award of this Association, and the occasion of their presentation, one in which this organization participate in some definite way.

That this recommendation be referred to the Board of Managers for investigation, and with power to act.

2nd. That the name of this committee be changed to committee on “American Citizenship”, that being the name of the committee of the American Bar Association most nearly corresponding to this committee, in aims and activities, to the end that their efforts be coordinated.

Respectfully submitted,

J. A. VAN OSDOL, Chairman, Anderson;
E. E. STEVENSON, Indianapolis,
CHESTER R. MONTGOMERY, South Bend,
ALBERT H. COLE, Peru,
GEORGE W. HOLMAN, Rochester,
Committee.

MR. VAN OSDOL: Before finally submitting this, let me take time to say just a word. What we are hoping to do is to get such a conception of our basic law that we will be able to understand that our Constitution isn’t something that just happened. Our Constitution is the product of centuries of sacrifice and of trials and privation, by a liberty-loving Anglo-Saxon people across the seas, and for nearly two centuries by those who came to this side before they saw their ideals written into the basic law of the new nation.

The Constitution to be properly understood must be viewed in the setting of its historic background. The spirit of that document shines out through the text only when illuminated by the torch of history. It was the never ceasing determination of the monarch to impose his will on the subjects, and it was the never-ceasing resistance of that subject against what he instinctively knew was an invasion of his inalienable rights that shaped the ideals and fired the spirit that led our forefathers step by step to the realization of that goal that has been so happily described as the government of the people, for the people and by the people.

It is with the idea that we ought to review all this that we are urging this movement and asking that it be carried on lest we forget the things that have really made us free.

I move the adoption of the Committee’s report.

* * * The motion was seconded by Miss Storck * * *

MR. SIMMS: Mr. Chairman, I want to take a moment of your time for making an appeal. I take it that most men here have made some sacrifice and have made some effort to assist in the carrying on of this work. For the last three years I have been brought so closely in contact with it that I know full well the problems that arise when we approach the time that these
contests come on. We are all very, very busy men and when we get away from this meeting and get away from this contest and get down to commonplaces of life, there is some difficulty in getting the members of our profession to take the interest in the work that they ought to take. Sometimes that has been a matter of discouragement, I dare say, to the Chairman of this Committee, and I know it has been to those managers in the various districts, to get that support and that enthusiastic response from members of the profession that they ought to have.

I want to suggest to every lawyer here, that you had better get on this work. The first thing you know, if you don't, you are going to have some young men, of which we will have a representative here this morning, that know more about the Constitution than you as a lawyer know. The first thing you know there are going to be a lot of bright school teachers, men and women, in the State of Indiana that know vastly more about the organic law of our state and nation than we know, so when this contest comes on again this year, as I am sure it will, I want to make this personal appeal that every member within the sound of my voice will feel a responsibility to stop what you are doing, lend your aid to get your schools and respective counties all enrolled in the contest. See to it that the money is raised, whatever is determined upon for the prizes, and then see to it that this happens, which is vastly more important than each of the other things, that when these contests come on, when these boys and girls come in from your county to your county seats, that the hall in which the contest is held is filled to overflowing with the citizens. You thus multiply by very large factors, the number of people whom this work will aid and assist.

I have attended many of these county contests and a number of the district contests. It was my honor last year to serve as presiding officer at the state finals. I can recall a dozen occasions where bright young boys and girls had prepared themselves and gone through their finals in the respective schools and come to a central point to hold a district contest when there wouldn't be a corporal's guard of the citizenship present. That is discouraging. When these young people are taking hold of this movement as they are, you can do a great work by dominating the community in which you live, and see that the citizenship who needs this more than anybody else, get out to these meetings and give the encouragement to these young people and learn things themselves.

So I rose for the purpose of seconding everything that the Chairman has said here and urging upon the lawyers that these contests will not move forward by themselves. It needs inten-
sive work in every local unit and the initiative toward that duty must be taken upon your shoulders.

Now, the change of this name which the adoption of this report will result in, I take it, to the American Citizenship, makes the Committee bearing the same name of the American Citizenship in the American Bar Association, of which I have the honor this year to be a member. The Committee on American Citizenship in the American Bar Association has had a very, very busy year because we have been working right along in connection with the activities in this state, and in every state in the Union. We have found it impossible to furnish the literature which this increased demand made by the effort that has been put forth by newspapers, lawyers and schools has called for. We have found it impossible, with the fund at our disposal, to send out literature that has been called for.

We put on many thousand radio addresses. In one week we had radio addresses being delivered by judges of Supreme Courts and men who had been called upon to put in succinct form an address that would be enlightening to those learned and those unlearned among the population, and we had addresses in which it was said millions were reached.

I have never been able to tell how they count the ones that listen in on the radio, but they must have some means by which they make estimates, at any rate. We have supplied, as far as our means would permit us, this literature. We have prepared documents of our own that we hope will be helpful to these young people in making these studies, and with respect to one question mentioned by this report, that of textbooks, there has been an effort made within the last twelve months to get together men who were competent to do so, an effort to prepare a textbook and among those efforts I have in mind one, (the name of the author, I think, is Mr. Church of San Francisco) which book I just read before I came to this meeting. It seems to me that would be a valuable book in the library of every citizen in the United States, and ought to be a textbook in every school, because it is so admirably and so completely and fully done that when the lawyer and the law man takes that book, designed for use in the schools, and carefully peruses it, when he gets through he will find he has an idea of the subject of our Constitution of the state and nation such as he never had before.

I want to close with the earnest appeal that every lawyer in Indiana takes upon himself this year to lend all the support in his power to see in his community a larger attendance upon these meetings assured, and that every school (in every secon-
Here is one of the results of the preparation for these oratorical contests. A boy in my neighborhood chose to become an aspirant to contest in his own school. He prepared his oration. He lives four blocks from me. I undertake to say that there wasn't a family within a radius of eight blocks where that boy lived that didn't get interested in that boy and his subject. I know he kept me up more than one night until after twelve o'clock in my library, gleaning what he could, and that is what happens everywhere. The neighborhood becomes interested, and if you can carry that interest so when they come to the finals, the crowd will be there, that the halls are filled to overflowing. Not only these people whom we are trying to reach will be benefited, but we ourselves will wake up to a new conception of our organic law, as has been said in this report. No matter how brilliant the lawyer, he cannot fully understand and comprehend this great document, the Constitution of the United States, unless he does interpret it through its historic background and setting. If we make that step, we will add to our culture, broaden our view, deepen our conception and stir our own minds to a great awakening. (Applause.)

MR. JOYCE: If there are any Kokomo people here they would know I would never be satisfied if I got in a crowd of this kind and couldn't make a speech.

Now, Dan, just before he took his seat, spoke of the historic settings of the Constitution. I want to take about five minutes of your time to call attention to some of that historic setting. I think one of the greatest phases of the Constitution of the United States is its provisions in regard to religious liberty, and it is the one that I think that we are all most vitally interested in.

Now, I happen to belong to that branch of the Christian Church that once in a while somebody gets afraid wants to destroy the constitutional liberty of the United States, the Roman Catholic Church. It is for the purpose of calling your attention to the obligation that we are under as Catholics to the citizenship of this country, that I have taken this opportunity to trespass upon your time for a few minutes.

Lord Baltimore was the first man in the world that had a conception of religious liberty as we know it in this country. He was born a member of the Church of England. After he grew up he became a dissenter, a non-conformist, and later a Catholic. He had the opportunity of viewing this from every angle and he was the first man, I think, in history, press or
layman, that conceived the idea of religious liberty as we have it in this country, and he founded that colony in Maryland with that idea, but the world wasn’t ready for it yet. It made slow progress, and after he had got the colony started, and it was prosperous, there happened to be a colony of dissenters over in Virginia, when the country had a law compelling everybody to conform to the Church of England. They thought they were being horribly persecuted by this law, and Baltimore said, “Come over to Maryland. We let every man worship God according to the dictates of his own conscience. It hasn’t anything to do with citizenship.” They came.

After they had got over and counted the voters, they found they had a majority, and then they decided they couldn’t afford to recognize people who believed in the Pope of Rome, and they repealed the Toleration Act.

My friends, at the beginning of the Revolution there wasn’t a place in the United States where Catholics had a legal right to worship except in the Quaker state of Pennsylvania. In Maryland they had to hold their worship in private chambers or violate the law.

Now, then, what I want to call your attention to—when it came to the adoption of the Constitution of the United States, there were seven Catholics in this country out of every thousand; seven Catholics and 993 non-Catholics made up the citizenship of this country. Now, that 993 wrote into the Constitution of the United States that wonderful privilege that gave the seven every right and privilege that all the others had, and said, “We are not afraid of it.” (Applause.)

Now, my friends, do you think it could be possible for us to forget that? Do you think now when we have risen, and today when we have grown up under that splendid constitution and that document to the day when we number one-fifth of the population of the country, that we can go back to you people and say, “We have forgotten. We were only seven out of a thousand, and we have forgotten.”

If there are any people under obligation to the great Protestant population for the liberties they have, it is the members of the Roman Catholic Church, and we will not forget, and we maintain a system of parochial schools that you don’t understand. It is not necessary that I give you the reasons. We have had contestants in those different contests and they have not acquitted themselves badly, and I just rose up to call your attention to this, because it isn’t spoken of very often, and I want you to understand when some fellow tells you that the Pope is going to come over here to take possession of this country of ours, we will meet him on the shore whenever he comes,
there will be twenty million Catholics meet him at the Atlantic Ocean in New York, and we will say to him, "Holy Father, we will take our religion from Rome, but our politics, never." (Applause.)

MR. HEPBURN: Might I say two or three words? I think there is no more important movement in the American Bar Association, nor in any state Bar Association, than that of bringing the Constitution home to the people, and it is a most encouraging thing to see the progress that is being made in that movement, but I have been struck with this fact: we have many thousands of young men and young women going through our colleges. They are to become naturally the leaders in their communities. In how many of our colleges are these students making a systematic, organized, historical study of how we got our Constitution, of what we paid for it, of what it is worth to us?

We require our students in our colleges to study English literature. In all of them, I expect, we require them to study English Composition. But that great topic, the essentials of American citizenship under our Constitutional form of government, is studied by very few students in our colleges and universities.

I say this word, Mr. President, in the hope that our Committee in this state at least, will take up that subject with our colleges in Indiana. I see no reason why, if we can afford to have a required course, required of every student in English Composition, we should not have also a required course required of every student in the essentials of American citizenship under our Constitutional form of government. (Applause.)

PRESIDENT DIX: Are you ready for the question? All in favor of the motion, which is for the adoption of the report of the Committee, will say "aye". (The motion was carried.)

The Association and its friends are to have the privilege and pleasure this morning of listening to the prize oration which was delivered by Mr. Collier Young, then a Shortridge High School student in Indianapolis. Mr. Young's oration is adjudged the best in the state.

Since that time other distinctions have come to this young man. He was selected from the State of Indiana as the most representative boy or young man to represent Indiana at the national meeting of representative boys held recently at the Sesqui-Centennial Celebration in Philadelphia. There were one or more boys from each state and from the Hawaiian Islands and Philippine Islands in attendance at this meeting, and to the
distinction and honor of Indiana, the highest award was given
to this young man, Collier Young.

Before giving his oration, Mr. Young will devote a few min-
utes to an explanation for the benefit of the lawyers and high
school students that are here of how he worked up his oration,
and the value which he thinks he got out of it.

I take great pleasure in introducing Collier Young. (Ap-
plause.)

COLLIER YOUNG: Mr. President, Members of the Indiana
State Bar Association, Friends and Visitors, and Citizens of
Michigan City: I commend most heartily the words of Mr.
Simms and others who urged greater patronage of the National
Oratorical Contest of Indiana, by the Indiana State Bar Asso-
ciation, and I feel quite confident that the Bar Association can
render no greater service than by lending its whole-hearted sup-
port to this movement for higher and finer citizenship in Indiana.

You know, I have had a little story on my chest for several
months that I have been waiting for a long time to spring on
such a group of representative lawyers. It seems that I have
been planning for the law, until I heard this story, and my
faith in the legal profession was somewhat shaken, so I feel
that it would not be out of place at this time. I hope many of
you gentlemen have never heard this story before.

It seems that two litigants were having a very, very heated
argument, and one of them said, “Look here, if I don’t get you
in the J. P. court I will take it to the circuit court.”

The other fellow said, “I’ll be there.”

“If I don’t get you in the circuit court, I’ll take it to the
Supreme Court of Indiana.”

“I’ll be there.”

“If I don’t get you in the Supreme Court of Indiana, I’ll take
it to the Supreme Court of the United States.”

“I’ll be there.”

Then the gentleman just flew clear off his head and he said,
“If I don’t get you in the Supreme Court of the United States,
I’ll take it to hell.”

The other fellow said, “My lawyer will be there.” (Laughter.)

Now, since the middle of May, which marked the close of the
National Oratorical Contest for me, in that fatal city of Louis-
ville, where I met my fate before a very charming young lady,
I have delivered this oration approximately eleven times before
various civic and patriotic gatherings, but I assure you, dis-
tinguished gentlemen and friends of the Indiana State Bar
Association, that I derive from this giving of the oration more
genuine pleasure and cheerful anticipation than at any time before.

I assure you in behalf of the boys and girls of Indiana who participated or were interested in the oratorical contest recently ended, that we owe you a debt of gratitude that we will never forget, and especially to the effective services of Mr. James Van Osdol of Anderson, and to the work of the Indianapolis News, we are especially indebted.

We trust that the contest may be perpetuated, because we believe that it is the greatest movement that has ever been begun in Indiana high school circles.

I recently had the pleasure of representing the State of Indiana, as your President, Mr. Dix, has stated, at the Sesqui-Centennial, and there it was forced upon me that America is not the country that the Englishmen declared had no ideals because there I saw such patriotic demonstrations, such wholesome respect for our splendor, historic splendor, as to forever dispel the stigma of such a remark.

In the towering architecture of Washington, we have materialistic America; in the historic splendor of Independence Hall, we have idealistic America, and in the fertile, green slopes of Valley Forge, we have spiritualistic America. So it is in a fervor of patriotism that I address you this morning on my subject, America’s Contribution to Constitutional Government.

* * * Mr. Young then delivered his oration. * * *

See page 137.

* * * The audience arose and applauded enthusiastically.

* * *

PRESIDENT DIX: I am sure I express the sentiment of every person here when I say that we thank this young man from the bottom of our hearts for the thoughts which he has given us, and the inspiration which his speech has given to all of us.

Now, before we proceed, there may be some of the guests who desire to retire.

Recess.

PRESIDENT DIX: Next in the order of business are the reports of three committees which have to do with organization of Bar Associations. The first of these is the Committee on County and District Bar Associations, Mr. William C. Coryell, Chairman.
REPORT OF SPECIAL COMMITTEE ON ORGANIZATION OF DISTRICT AND COUNTY BAR ASSOCIATIONS.

To the Members of The Indiana State Bar Association:

One of the first official acts of George O. Dix, President of this Association, was to ask authority of the Board of Managers to appoint this Special Committee on Organization of District and County Bar Associations. He named M. F. Fansler, Logansport; Frank R. Miller, Terre Haute; Frank N. Richman, Columbus; Henry B. Walker, Evansville, and myself. It has long been the desire of many of our members to have a plan of organization similar to the plan followed by the American Medical Association.

President Charles M. McCabe in his annual address to this Association in 1922 made a very earnest and able plea for an improved organization which was encouraged by his successors and given special emphasis by the late Lex J. Kirkpatrick during his term as President of this Association in 1924-25 and has been made a special order by the present administration.

At the outset this committee found only one congressional district in the State to be organized and that was the Ninth District, the home District of the said Lex J. Kirkpatrick.

This committee, composed of younger lawyers, is much indebted to the older lawyers of larger experience and more mature judgment for their counsel and timely suggestions. We began our work by holding a conference at the American Bar Association meeting at Detroit last September with President Dix; George H. Batchelor, then Secretary; Judge Kirkpatrick; J. A. Van Osdol; and Dan W. Simms, when a temporary organization chairman was selected for each congressional district as follows:

First, Frank H. Hatfield, Evansville.
Second, John C. Chaney, Sullivan.
Third, Walter V. Bulleit, New Albany.
Fourth, Frank N. Richman, Columbus.
Fifth, Frank R. Miller, Terre Haute.
Sixth, J. Rufus Hinshaw, Shelbyville.
Seventh, Lawrence B. Davis, Indianapolis.
Eighth, Donald D. Hensel, Muncie.
Ninth (organized).
Tenth, Dan W. Simms, Lafayette.
Eleventh, Milo B. Feightner, Huntington.
Twelfth, Fred B. Shoaff, Fort Wayne.
Thirteenth, James J. Farnan, Laporte.

Although these lawyers were all very busy men yet they responded willingly and did the organization work in their Districts most capably.

This committee was helped by the professional interest that has been awakened among the lawyers of Indiana by the splendid work of our Committee on Constitutional Education in recent years.

District bar organization meetings have been held and district officers elected in each District except Thirteenth in which plans are being made for a district meeting. One member or another of this committee has attended district bar meetings in ten districts and visited nearly one-half of the counties in this State. All of the lawyers in the Seventh District are within the jurisdiction of the Indianapolis Association and no additional organization was deemed necessary there.
President Dix and Vice-President Dickens at considerable sacrifice of
time and at their own expense have attended all of these district meetings.
Mr. Dix delivered an able and well prepared address on "Organization"
and Mr. Pickens as Chairman of the Membership Committee of this Asso-
ciation emphasized the importance of every lawyer being a member of
the State Bar Association and also a member of his local bar Association.

Among the other speakers at these district meetings were Col. Paul V.
McNutt, Cassius C. Shirley, Dan W. Simms, J. A. Van Os Dol, Judge Louis
B. Ewbank of the Supreme Court and A. W. Brady, of Anderson. The
attendance and enthusiasm at these meetings have exceeded the expecta-
tions of those who are interested in this organization movement. Indian-
apolis press and press generally have been very generous with publicity
of these district meetings.

A tour was made in five districts by lawyers from outside of the
district accompanied by lawyers in the district. The Fourth District was
toured by Frank N. Richman, Columbus, a member of this committee and
Chairman of the District; Lee Tremain, Greensburg, of the Membership
Committee, and Wm. C. Coryell, Marion, member of this committee, in
company with President Dix. The First and Third Districts were toured
by Mr. Dix, Mr. Pickens, Secretary Baker, Frank H. Hatfield, Evansville,
District Chairman, and Henry B. Walker, Evansville, a member of this
committee; and the Second District was toured by Mr. Coryell. The
Fifth District was toured by Frank R. Miller, Terre Haute, member of
this committee and Chairman of the District. Most of the districts plan
to hold two meetings each year and some have already held two meetings
this year. The Fifth District Association held a very successful all-day
meeting June 26 at Turkey Run.

Some new county bar associations have been organized and other county
bar associations already organized have been stimulated to greater activ-
ity. Much work remains to be done with reference to local associations
and it may very properly claim some attention from the officers and
Board of Managers for the coming year. We think much can be done
through the District organizations. One of the most active associations
in Illinois is in a small county and has only four members.

Some county associations hold regular monthly meetings and others
meet twice a month with pre-arranged programs for the year printed and
published at the beginning of the year. Other county associations meet
only on funeral occasions and some have less than 20% of their members
listed as members of the State Bar Association and have very few mem-
bers of the American Bar Association. Regular bar meetings are urged
for they are worth while in many ways. Personal enmities and bitterness,
if any exist, fade away in local bar associations that meet regularly.
Strange as it may seem, some of the larger cities as well as some of
the smaller cities that maintain very active local associations show a
marked indifference to the State and American Bar Associations. A
noticeable improvement in this line has been observed during the year due
largely to the unusual activity of the present officers and board of man-
agers and also to our splendid magazine, "The Indiana Law Journal."

We recommend that this committee be discharged and that the by-laws
be amended to provide for a standing committee on organization, thereby
following the plan of the American Bar Association, and also to provide
for an Advisory Council in addition to the Board of Managers. This
Council would be composed of the Presidents of each District Bar Asso-
ciation, who would nominate officers of the State Association, still permit-
ting members of the Association to submit additional nominations. This Council would be authorized to make such further recommendations as in their judgment may seem proper. Here, too, we would be following the American Bar Association with its general Council in addition to its executive committee.

We do not believe that organization is an end but a means of promoting the interests of our profession, of becoming more effective in matters of legislation and judicial selection, of encouraging the study of the constitution in our public, private and parochial schools and of doing our duty to society, in perpetuating our institutions and in retaining the blessings of liberty for ourselves and our posterity.

Respectfully submitted,
WM. C. CORYELL,
M. F. FANSLER,
FRANK R. MILLER,
FRANK N. RICHMAN,
HENRY B. WALKER.

* * * Mr. Coryell presented his prepared report, and moved that the report be adopted, that the recommendations in the report be referred to the Board of Managers, and that the Committee be discharged. * * * (The motion was seconded and carried.)

PRESIDENT DIX: The next order of business is the report of the Delegates to the Conference of Bar Association Delegates, to be made by Mr. Charles M. McCabe.

MR. MCCABE: Mr. President, Ladies and Gentlemen: I must ask the indulgence of the President and members of the Bar Association for not having prepared a written report of this delegation sent to the Conference of Bar Association Delegates. Time in which to make report to this body is so brief and the subject is so great and so important that a detailed report would exhaust the patience perhaps of this body and the program of this day.

I had the honor to be one of the Delegates sent to the Conference of Bar Association Delegates that met in Washington on the 28th day of April, immediately preceding the meeting of the American Law Institute which met there on the 29th and 30th of April, and the first of May of this year. That honor came to me along with Dr. Paul McNutt and Judge Travis. I believe Judge Ewbank was there also.

The meeting was presided over by ex-Secretary of State, Charles E. Hughes, who addressed the body of Delegates and foreshadowed what actually took place, a distinct division of opinion among the lawyers, a division of opinion which emanated from the organizations existing in the city and county of New York.
In 1870, I believe it was, was the first organization, strictly speaking, of a bar association. Prior to that time life was not so complex and the Bar up to that time had been, at least in the early history of our country, leaders in thought, leaders and examples in character, outstanding figures. Life was simpler then than it came to be in 1870 and in 1870 the Bar Association of the City of New York was organized and William M. Evarts was its first President. In his address, as revealed by the reports on that occasion, he called attention to the fact of the decadence of the high standing and ideals of members of the Bar, and the necessity that rested, and the responsibility that rested upon the members of the Bar to purge itself as a body from the evils that had grown up at that time, evils which have continued to grow and multiply.

The processes of evolution began then and they have been carried on ever since. The Bar organization, as a voluntary organization, has done immeasurable good, but we face the fact that under voluntary organization only the minority and very small minority of the members of the Bar became members of the organization, whether a city, county, state or national.

Six years ago this matter of organization or integration, as it is called, of the Bar was taken up by the Conference of Bar Association Delegates which had its origin and was created by the action of the American Bar Association and at every session since of the Conference of Bar Association Delegates that matter has been discussed, and it was deemed proper that there should be a separate conference, separate and apart from the American Bar Association annual meeting for the purpose of discussing and furthering the proposition of the integration of the Bar as a unit, that is to say as a separate entity, and in the address of Charles E. Hughes, ex-Secretary of State, he expressed the idea that the fight was only begun, that we must hold onto the ideal, the objective—he didn’t say it in those words—but that we must not let go of the ideal which is to be the ultimate goal of the organization, namely, that the Bar can purge itself from its discredit of disreputable, dishonest, and contemptible members of the organization.

It was developed and discussed that the people of the country regard the Bar as an entity, though it is far from being such, and they hold the Bar as a whole, as a unit, responsible for the derelictions of every member of the Bar, and there is not one of us who does not suffer when a member of the Bar is found to be false to his oaths and to the ideals which should be the guiding star of every member of the Bar. So it is important that there should be some action taken looking to the final consummation, final reaching of the goal that the Bar shall be an entity.
The result of the action of the Conference of Bar Association Delegates as shown by the meeting in Washington is that already the states of Alabama, North Dakota and California—I am not sure but Oregon and New Mexico,—have organized, and I think Washington has come in since that time. But reports were made from those first three or four states before this meeting, and it was exceedingly interesting to note that the organization under statutory authority was accomplished only by resort to the very ardent cooperation of the members of the Bar as a whole. Notably that was so in California when the members of the Bar openly discussed it, took the matter up and had meetings and frankly and fully discussed it, and it became a matter of publicity in the newspapers and finally the knowledge of the importance of the movement was carried to the Legislative body with the result that the bill was enacted in California without a dissenting vote in the Senate, and I think there were only eleven votes in the negative in the House of Representatives, and the Governor vetoed the bill. They will get that organization completed.

In Alabama it has been completed and is in operation. In North Dakota it is in operation and in New Mexico; I think as Mr. Simms suggests, in Washington State also.

The result of the Conference of Bar Association Delegates, especially in view of the controversy that arose from representatives from the State of New York, and the long discussions and argumentation that followed from members from the State of New York, was that a resolution was adopted by the Conference declaring that it was a matter not for the National Bar Association, but for each state organization to carry on the work of organization under statutory authority.

One interesting development was this: that in the State of New Jersey, the Supreme Court took the broad ground that the Legislature could not take away from the Court its inherent right to control and organize the Bar, not to organize it perhaps, but to control admissions of members and disbarment of members, with the result that the Supreme Court, along with the Bar organizations in New Jersey, have full and complete control of that matter.

Reference was made, if you will pardon the personal allusion, by Mr. Coryell in his report that preceded my report, to the fact that I had advocated some of the things that have been accomplished when I was President and made an address. I do not deserve any credit for that; it was in the atmosphere, and our good friend, Judge Van Osdol, followed with an address of very superior ability to mine on this very identical subject,
calling attention of the members of the Bar to the need for education on the subject of the Constitution of the State of Indiana. The seed fell upon good ground. The result, in part at least, is shown by the splendid address made by young Mr. Young. I take off my hat to the youth of the land. It was young Thomas Jefferson who wrote the Declaration of Independence; no old men could have done it. It was he in his youth who wrote that all men are created equal and that once the limitations that bound the citizen were taken away and the initiative and the energy and the power and the ability of the humblest citizen manifested itself and has brought forth America as the leader of the world.

I desire at this time to express my very hearty appreciation of the work that has been accomplished in the matter of constitutional education and those whose names were read off in the report deserve unstinted praise. The work of the Chairman of the Committee and his vantage post of aides in disseminating the gospel of the spirit and the principles of the Constitution are deserving of unstinted praise, and if nothing more is accomplished than the spirit of brotherhood and fellowship, working shoulder by shoulder with each other, for the accomplishment of a high ideal, worthy of the best of American citizenship, it will be worth all it costs even though we fail, but there can be no such thing as failure when we think of the history behind the Constitution, as Mr. Van Osdol said, of centuries of sacrifice, of centuries of efforts, centuries of suffering, only finally to achieve the wonderful success that was achieved by the molding of that sacred and immortal document. Shall we falter, shall we give up our efforts to organize the Bar so that it may be an outstanding monument to the services rendered by us, those who preceded us and those who will follow? Shall we yield or shall we fight on to the end until the Bar of every hamlet throughout the breadth and length of this land shall be worthy of the name?

I had the duty devolve upon me some years ago to prosecute a fellow member of the Bar for blackmailing a humble citizen, a German citizen, ignorant, and it was one of the best things that ever happened. I am looking now at the Honorable O. B. Ratcliff, who presides over the court in Fountain County wherein that prosecution took place, and the derelict member of the Bar, had an indeterminate stay in this goodly city of Michigan City for a considerable length of time. The Bar had an example of what should happen to every one who suffers default in the discharge of his duty and the fulfillment of his oath of office. (Applause.)
PRESIDENT DIX: Does the Association desire to take any action upon Mr. McCabe's report? I don't know that it calls for any action. If none is desired, we will pass to the next order of business, which is the report of the Committee on Special Organization. Mr. Lewis A. Coleman, the Chairman, due to illness, is not able to be present. I think he sent his report.

* * * Secretary Baker read the report. * *

* * * It was voted, on motion by Mr. Don Fraser, seconded by Captain Salsbury, that the report be approved. . . .

PRESIDENT DIX: The citizens of Indiana have just cause to be proud of their education institutions. The lawyers of Indiana have a special reason and cause to be justly proud of the Indiana University School of Law. It is my pleasure to introduce this morning Dean Paul V. McNutt of that school, who will address you. Dean McNutt. (Applause.)

DEAN PAUL V. MCNUTT: Mr. President, Ladies and Gentlemen: I am still under the spell of the oratory of Mr. Young, and I with difficulty suppress the desire to throw this manuscript away and make a speech.

Recalling the admonition of the President, which accompanied the invitation to write this paper, not to be academic, and remembering Mr. Fraser's instructions to Mr. Simms last night to make the ceremony short and the epitaph simple, I wish to speak to you briefly upon the subject of the Triumvirate of the Profession of the Law.

See page 120 for address.

* * * Dean McNutt read his prepared paper, with the following interpolation:

I submitted this manuscript to one member of the Board of Managers and asked for suggestions. He said I lost my nerve when I reached the end of the paper and failed to say what the step was. I haven't lost my nerve, and I am going to tell you, if you can forget my connection with the educational system, and remember that I will still retain active membership in the Bar.

I wish to say that the solution of the problem is not in any panacea which will fall from Heaven, but is in the hard, unrelenting work of research; that we must make it possible to assemble the materials, the authorities, as it were, from which we may draw our conclusions. Where can this be done? I say to those of you who are in the active profession, have you the time to do it? And if you had the time, would you do it? And I say to those of you who are members of the Judiciary, have
you the time to do it, and would you do it? I am afraid the answer is no. It has been in the past, and, therefore, I submit to you that the only place today—not necessarily for the entire future, but today—that it can be done is in the law school of high grade. That is a part of its business, and if we are to bring these things about, we must make possible that work. We of the law schools have not performed the task in the past except in a desultory fashion because we have not had enough to do it with. We have a research professor of law, but the demands of the curriculum do not make it possible for him to give his time to research. That must be done, and the lawyers of the State of Indiana must make it possible for this state to make important contributions to the jurisprudence of the future. (Applause.) (Continued reading—"I am confident that the legal triumvirate," etc.) (Enthusiastic applause.)

PRESIDENT DIX: I am sure the Association is profoundly impressed with Dean McNutt’s analysis of this critical situation, and of the things which he has told us with reference to his own law school, and I hope that if it has done nothing else, it has stimulated in the minds and tendencies of the members of this Association a more acute and earnest desire to get back of the law schools of this state and especially the law school over which Dean McNutt presides.

The next order of business is the report of the Grievance Committee, Mr. Henry B. Walker.

* * * Mr. Walker presented his prepared report. * * *

MR. WALKER: I just want to urge on behalf of the Grievance Committee which will succeed, that any of these complaints which may come to any of you members of the Association individually for investigation will be given your careful attention. The Grievance Committee has possibly the most disagreeable job of any other Committee connected with the Association, but the duty devolves upon it to do what it can to assist in obtaining the results which have been suggested in two or three other papers which you have heard, and that is, purging the Bar of such persons as injure all of us, and this Committee has no real powers. It can recommend, and particularly when the person complained against is not a member of the Bar Association, it is most difficult to tell exactly what to do, but the Bar Associations, local and in the state, are becoming much more powerful, and I believe with the cooperation of all that the work that the Committee can do will become more and more effective. (Applause.)

* * * It was voted, on motion, duly seconded, that the report of the Grievance Committee be accepted. * * *
President Dix: We will next have the report of the Committee of Necrology, the Honorable Merrill Moores, Chairman.

Mr. Moores: My melancholy duty is to report the sad havoc which the Angel of Death has wrought in this Association during the last year, not so much perhaps in the matter of numbers, for the Indianapolis Board of Trade has lost twenty-three. So far as the Secretary and I have been able to discover we have lost but thirteen members, but every one a star.

I have to report the death of Samuel M. Ralston, Governor, Senator, a great lawyer and a great man; the death of Robert W. McBride, of Indianapolis, formerly a member of the Supreme Court, for many years Judge Advocate General of the Grand Army of the Republic, having rendered very efficient service as a sergeant in the Civil War, and a very successful lawyer, a real, wholesome man; the death of two former judges of the Appellate Court, Frank S. Roby and Edward W. Phelps, both of them strong and able men; the death of George K. Denton of Evansville, formerly a member of Congress, who was defeated for the Supreme bench by one vote; the death of Harry P. Sheridan, with whom I think every one here was acquainted, the exceedingly efficient referee in bankruptcy of the federal courts of the state; the death of Harrison Burns, not a practicing lawyer, but a law writer of very great ability, the compiler of the revised statutes, many of them, at the ripe age of 83 or 84; the death of Aquilla A. Jones of Indianapolis, in his youth a great athlete, in his ripe age a great and capable lawyer, a man who had the absolute public confidence, old and young; the death of two men of Lafayette who were fine lawyers, Samuel P. Baird and George P. Hayworth; the death of Roscoe A. Haviland of Marion, of Rex E. Ballinger of Kokomo and of Geddes Van Brunt of Frankfort. Those thirteen names are all that the Secretary and I could find.

* * * The following names were added from the audience: Judge Kirkpatrick, Judge John W. Donaker, the Honorable William Darroch of Kentland, William D. Frazer of Warsaw and the Honorable Donald W. Vail of Goshen. * * *

President Dix: Next is the report of the Entertainment Committee, Mr. Remster A. Bingham, Chairman.

Mr. Bingham: Mr. President, Members of the Bar: The Committee has functioned and is functioning. However, I would be derelict if I did not call to your attention the graciousness of the Michigan City Bar. The Michigan City Bar Association has given without stint of their time, such busy men as Mr. Miller, the ex-President, Judge Tuthill, the present President,
and others of that association have given without stint, and have done a tremendous amount of work to make this a pleasant entertainment for you. I think it is due that we thank them for that gracious hospitality which they have shown us.

In addition I want to call attention to the hospitality which has been extended by the ladies of Michigan City to the wives of members of this Association, who have seen fit to attend this meeting. This is something new to the Association, and I am deeply appreciative, and on behalf of the Committee, I want to thank them personally for what they have done for us. (Applause.)

MR. DON FRASER: If there is a moment of leisure, I would like to refer to that report of Mr. Stevenson. There is one clause in that report, worded as carefully as it is, that I think we ought not to approve. It is all excellent and has been constructed with care. This clause related to turning over misdemeanor cases to the Appellate Court.

Now, I address myself to Mr. Stevenson as well as the rest of you, and I am quite sure that we ought not to suggest to the Legislature to tinker any more with the jurisdiction of these courts.

PRESIDENT DIX: If you will permit a suggestion from the Chair, the consideration of that report has been deferred until this afternoon when Judge Shea, who is the special Chairman of that particular Committee, and which collaborated with Mr. Stevenson's Committee, is hoped to be present.

MR. FRASER: I don't believe it would take us a minute. I don't believe there is a lawyer here who wants the Appellate Court overwhelmed with civil cases.

JUDGE EWBANK: This is a subject directly connected with Judge Shea's report. I think you are misinformed as to just the latitude of Judge Shea's report.

MR. FRASER: I beg your pardon for interrupting, but if I happen to fall dead, I want everybody to know that I objected to it. (Laughter.)

PRESIDENT DIX: We will now have the report of the Law Journal Committee, Mr. Willis E. Roe, Chairman.

To the Indiana State Bar Association:

Your Committee on Law Journal begs leave to report, that it has held numerous meetings, most of which were in conjunction with the Board of Managers of the Indiana State Bar Association. As a result of these meetings we are pleased to report that satisfactory arrangements have
been made with the Indiana University School of Law to supervise and have charge of the editorial department.

This department is constituted as follows: Paul L. Sayre, Editor, who has as his assistants a faculty board consisting of Paul V. McNutt, Charles M. Hepburn, James J. Robinson, Walter E. Treanor, and Hugh E. Willis.

Associated with the above are an advisory board of editors representing all the law schools of the state, consisting of Joel A. Baker, Claris Adams, Indianapolis; Charles S. Baker, Columbus; Albert J. Beveridge, Indianapolis; Louden L. Bomberger, Hammond; William P. Breen, Fort Wayne; Sumner Clancy, Indianapolis; George M. Eberhart, Huntington; William F. Elliott, Indianapolis; Louis B. Ewbank, Indianapolis; Galitzen A. Farrabaugh, South Bend; Donald Fraser, Fowler; John S. McFaddin, Rockville; Abram Simmons, Bluffton; Dan W. Simms, Lafayette; A. Jewell Stevenson, Danville; Evans B. Stotsenburg, New Albany; Conrad Wolf, Kokomo. These with a Student Board of Editors comprise the editorial department of the Indiana Law Journal as now constituted. Joel A. Baker, the Secretary of the State Bar Association, is the business manager who is in charge of the subscription and advertising department.

The Indiana Law Journal under the most efficient work of the editorial departments are already producing a journal which has surpassed the expectations of your committee.

The expense necessarily incurred to produce this class periodical is larger than was originally contemplated, but we believe that the bringing to the membership of the Association from time to time, the work that is being done by it in building up the membership and stimulating interest, is conclusive that the money has been well spent. In order to cover the added expense your committee recommends that membership subscriptions be $1.50 per member to be deducted from the dues of each member.

Mr. Baker has rendered excellent service in obtaining advertising for the Journal, but this is too large a job for one man who gets so little for his services. He should have the cooperation of the entire bar in this enterprise. The lawyers should insist that those from whom they purchase books and office supplies carry an ad in the Journal. The more ads we get the larger and better we can make the Journal.

Your committee believes that the Indiana Law Journal is now thoroughly established with a program which is bound to succeed and that it is no longer necessary to have a special committee. Your committee therefore recommends that the Law Journal Committee be discharged and that its duties be transferred to the Board of Managers.

Respectfully submitted,

JULIUS C. TRAVIS,
WILLIS E. ROE,
Committee.

MR. ROE: Now, gentlemen, I only desire at this time to repeat what I think I said a year or two ago in connection with the Law Journal. I had not in mind so much the establishing of a journal that would take the place that this one has taken, as I did the idea that it would stimulate and build up the membership of this organization. From my legislative experience I have learned that it is almost impossible to get anything through the Legislature where those who desire legislation are
divided. Those of you who live at Indianapolis know that if you try to get through legislation that involves Indianapolis, that if a part of your Legislative Committee is against the bill, the other members of the Committee say, "Why shall we enter into their disputes?" and so we find ourselves when we are trying to put over a program many times confronted with some able lawyers on the floor of the House or Senate who are not members of this Association who combat our efforts to put across our programs, and if we are able to get into this Association the large percentage of the lawyers of the state, we will then be able to go forward with a program such as we would like to put to the front, and such a Bar Association as we have in Indiana ought to put across.

So if there is any one thing I would like to urge more than another, it is that the members here go home and do your utmost to get into the State Bar Association every member that it is possible, to get into it, so that our program may go over without opposition from the Bar itself.

Now, Mr. President, I at this time would like to move the adoption of this report.

MR. DAVIS: I desire to second the motion and express my appreciation of the Journal. I think it is one of the greatest things that the present administration has done. I think we are fortunate in having the cooperation of the State University. I think that this magazine is a message to all of our members, especially to that great body of members that do not attend the conventions. I think it should be furthered.

* * * The motion was carried. * * *

PRESIDENT DIX: You have all seen many times the name of the Editor, and you see that he disclaims responsibility for the writings of others. Perhaps, inasmuch as he is a comparatively new man in the State of Indiana, there may be many of you who have not seen him or heard him, and it is a great pleasure to introduce Mr. Paul L. Sayre, the Editor of the Journal, who must be responsible for the remarks which he makes today. (Applause.)

MR. SAYRE: Mr. President, Ladies and Gentlemen, Members of this Association: I have no report to make of any character. That has already been very ably given to you, but I would like to go into detail a little bit about how this thing works out, how the thing is done.

In the matter of the legal directory at the end of the Journal: You notice there we publish the names of the new members and we also make an effort to give news of the new partnerships
that have been formed or new addresses, that is, professional addresses, or new connections with the Bar or with the Bench.

Now, we have had very little of that information that we could use in previous issues due to the fact that you members and your brothers that are not here now, do not give us that information. I thing all of us take some college alumni weekly or some fraternal paper of some kind or other in which there are brief notes of what the members of different classes are doing. I know I take one and I don't read any of the articles at all, but I turn to the alumni notes. I like to know whether my classmates are getting married and having children or what they are doing, and so on. It only takes a few minutes to glance through those little notes, but they are all of personal interest to those who have connection with them.

Now, personal information of a professional nature, of course, can only be obtained fairly if you mail in that information. Use a penny postcard if you like, but when you form a new partnership or a new connection of any kind or move to a new town, mail in the news. No element of modesty should hold you back. It isn't that you are advertising yourselves any more than if it were published in a college or fraternal paper. It is information; it is for the use of all of us that we can know what the various members of the Bar are doing. I hope you are mailing that news, and that the other members do the same thing.

One thing more is this matter of news, bench and Bar, which you know we have. As a matter of fact, I get almost all that news from a clipping service which we employ, newspaper clippings. Often it is inadequate; often it is inaccurate. That is unfortunate, but unless the Secretaries of all the Bar Associations mail in this information, I don't know of anything else I can do. At the present time very little information comes in in that way. It seems to be a matter of inertia. You just delay the matter or think we are not interested in it, and you don't mail it in. I am mortified to place notices in the Journal. It isn't seemly, but I tell you now, man to man, that I hope the Secretary of each Bar Association will write in once a month, say, even that isn't too much, or whenever they hold some meeting of some kind, a report of that meeting. We are all interested in it. If he doesn't do it, any private member can do it. If any of you have any news in keeping with what Mr. Roe has urged, we need that news for our mutual cohesion and we are dependent upon the officers and the individual members to mail it in.

Third, we have the matter of articles and comments. An article or comment is very much the same kind of animal. The
comment is a little different because it attempts to nail down some particular point with some care rather than to treat in a general way a general question of the law. In importance, I should hesitate to declare that one was more important than the other. We need articles. Now, I have a sort of feeling that many of you feel, "Oh, well, the Law Journal is operated and there are a lot of editors there and they get it out," and that is the end of it. "I don't want to intrude; I am not learned enough; I haven't time," all such points of view.

Now, depend upon it, this Law Journal is dependent on the contributions of the common garden variety of lawyer all over Indiana; no special group is adequate or has undertaken the matter. It is your journal. I haven't a doubt but there are a number of lawyers here now and others elsewhere in Indiana who have worked out one or more careful points in the law that they could write an article on of value to all of us. I can't go down and hunt them out. I have printed announcements urging them to write. Now, I tell you frankly and directly we are counting on those articles from men who are not now directly connected with the Journal at all and the future quality of the Journal is dependent on it.

Last, I am new at this job; I have much to learn. I hope I have a consecrated will to be of some use, but I have limited knowledge. You have lots of ideas as to how we can improve it, no doubt. I hope you will write in and let me know about it. (Applause.)

PRESIDENT DIX: The Special Committee on Invitation of the American Bar Association to meet in Indiana, Mr. Merrill Moores, Chairman.

MR. MERRILL MOORES: I regard it as hopeless unless we can change the time of meeting to some other month. The Committee hasn't met. I have been a member of the American Bar Association since 1893 and almost invariably attend the sessions. I find the impression prevails that there is only one other country besides Texas that is hotter than Indiana in the summer. They don't want to go to Texas and the other country, and they don't want to come here. When we met in Washington we met in October. The natural time for lawyers to meet is in vacation, and in this country, I am sorry to say, we have only one vacation a year and that is in the summertime. The Canadian border is pretty close, and there are summer resorts outside of Indiana.

I know of nothing more delightful than this, but I have not been able to do anything with it. I have talked many, many times with the Executive Committee that fixes the place of hold-
ing the meeting, and I am utterly hopeless and discouraged. I think the Committee ought to be discharged and another appointed. I can't persuade them to come.

* * * It was voted, on motion duly seconded, that the report of the Committee be accepted and the Committee discharged.

* * *

PRESIDENT DIX: We will now have the report of the Special Committee appointed to promote the passage of the procedural Bill, Professor Hepburn.

PROFESSOR CHARLES M. HEPBURN: Mr. President, Members of the Association: For some fifteen years a movement growing in intensity as the years have gone by has been made to induce Congress to pass an act which would permit the Supreme Court of the United States to frame general rules for procedure in the district courts of the United States in causes at law. It will be remembered that the Supreme Court of the United States has and has exercised for years authority to frame rules for causes in equity, causes in bankruptcy, and causes in admiralty, but from 1789 down Congress has legislated as to the procedure in the district courts in causes at law. Back in 1789, another act in 1792, and then an act in 1872, are the monuments of that form of legislation. This act in 1872, better known as the Practice Conformity Act, is the act which now stands in the way of a simple uniform, scientific system of procedure in the federal courts, and the importance of a change has become very much greater in the last few years. The American Bar Association has acted upon it, other state bar associations have acted; this Bar Association just a year ago acted with a resolution approving the uniformity of procedure bill which had been pending then for many years in the United States Senate, and appointed a Committee to cooperate as best it could in obtaining the enactment of that bill. It was contemplated that there might be a conference at Washington between members of the Committee of the American Bar Association in favor of this measure and various committees from various state bar associations for the passage of this bill, but it seemed to the American Bar Association Committee that it was hardly worth while as matters then stood to call a meeting.

I wish to read the paragraph from the report which the American Bar Association Committee on the uniformity of procedure bill will make next Friday at Denver. This bill is known in the Senate as Senate Bill 477; in the House it is House Bill 419. In its report next Friday at Denver, the American Bar Association proposes to say this:
"Senate Bill 477 and House Bill 419 are both suppressed in the respective judiciary committees of the Senate and House, and the vote on the floor is denied although 82 Senators and over 80% of the House have signed questionnaires agreeing to vote for the bill. It is obvious, therefore, that two or three Senators are exercising a greater power than the Chief Executive of the United States, whose veto could be overridden with a two-thirds vote. Moreover, the President can hold a bill but ten days, but a Committee of the Senate or House can hold a bill forever. There is no way of preventing this oppressive conduct except through a righteous public resentment that requires the organization to become effective."

This interesting and encouraging thing, however, has happened: After that report containing this paragraph was framed and in type, the Senate Judiciary Committee did report the bill to the Senate. It was reported only by a majority vote, but 82 Senators had already expressed themselves in favor of the passage of the bill, and it was known that 80% of the members of the House were in favor of that passage.

I called at the office of the Chairman of the Senate Committee, Senator Cummins, on the 29th of June, asked him what would be the state of the bill, whether there was any hope. For fifteen years the effort has been in vain. I was told that within a day or two Senator Cummins as representing a majority of the Senate Judiciary Committee, would make a report to the Senate, strongly recommending the passage of the bill. That report was made on July 1, but it was not until yesterday that I obtained official information as to the result. Eighty-two Senators at least were in favor of it. The majority of the Judiciary Committee was strongly in favor of it.

The report which was drawn up by Senator Cummins and presented by him was strongly in favor of it, and there were strong arguments in its behalf. Yesterday I obtained official information that the bill had gone over.

This question I also have asked of the Senate Committee and of the American Bar Association Committee on the subject: Is it worth while to keep up the effort? You will notice that the American Bar Association Committee is calling for the support of the measure. Senator Cummins tells me that the matter will have attention; that a strong effort will be made next December to get the bill through. In Senator Cummins' office they have great hope that the bill will go through, but it will require renewed effort.

Instead of making, Mr. President, the report which I had drawn up before I knew what the fate of that bill will be, I wish to submit a resolution and ask its adoption. There has
not been time since yesterday to draft a written report. If it is permissible, I would like to submit a written report later, but I will submit now for action this morning this resolution: (Read the resolution.)

UNIFORMITY OF PROCEDURE BILL RESOLUTION.

WHEREAS, The Judiciary Committee of the United States Senate, having long had under consideration a Bill to give the Supreme Court of the United States authority to make and publish rules in common law actions did, on July 1, 1926, report the same to the Senate with a recommendation, by a majority vote, that the bill pass in the following terms, namely:

Section 1. That the Supreme Court of the United States shall have the power to prescribe, by general rules, for the district courts of the United States and for the courts of the District of Columbia, the forms of process, writs, pleadings, and motions, and the practice and procedure in actions at law. Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant. They shall take effect six months after their promulgation, and thereafter all laws in conflict therewith shall be of no further force or effect.

Section 2. The court may at any time unite the general rules prescribed by it for cases in equity with those in actions at law so as to secure one form of civil action and procedure for both. Provided, however, That in such union of rules the right of trial by jury as at common law and declared by the seventh amendment to the Constitution shall be preserved to the parties inviolate. Such united rules shall not take effect until they shall have been reported to Congress by the Attorney-General at the beginning of a regular session thereof and until after the close of such session.

WHEREAS, The Indiana State Bar Association assembled in its annual convention 1926, is of the opinion that the bill if passed will secure a greatly needed improvement in the administration of justice in the Federal Courts and will tend to promote a simple, scientific and unified system of civil procedure in both Federal and State Courts in all the States of the Union; and

WHEREAS, The passage of this bill has hitherto been prevented by the objection of a small minority in the United States Senate, and the bill has therefore gone over to the next session of Congress; therefore, be it

Resolved, That the Special Committee of three members appointed in 1925 for the promotion of the Uniformity of Procedure Bill be continued for the purpose of presenting these resolutions to the Senators and Congressmen of Indiana and to the District, the County, and the City Bar Associations in Indiana and to seek their active participation in this movement, and further, that this committee of three be authorized to cooperate in a conference at Washington City with similar committees from other states and with the committee of the American Bar Association on Uniform Judicial Procedure, in an urgent effort to secure the passage of this bill at as early a date as possible.

Mr. President, as our time is short I will not go into the reasons which have been advanced as to why it is desirable that this should be done in the interest of justice in the federal courts, and also in respect to the state courts. I would like to
present this in a written report. I will now simply move the adoption of this resolution.

* * * The motion was seconded by Mr. Roe. * * *

MR. GRESHAM: This bill is not constitutional, and that is why. Although 82 Senators may have said privately they were for the bill, it has not yet even been voted upon in the Senate. So it illustrates the force and effect of the constitutional limitations.

Now, at the Illinois Bar Association a week ago it was asserted that the bill had gone through. The purpose and intent back of all this is all proper and right, but the objection is that he cannot make a legislative body out of the Supreme Court of the United States. Now, if you do, maybe the destination which our eloquent young friend from the Shortridge High School told us about may be the ultimate end of the American system of jurisprudence. The purpose back of this bill was to consolidate the equity, common law, admiralty jurisdiction of the United States into a single court, but that cannot be done by a system of rules. It requires, and required even under the English system where all judicial authority, originally at least, that it come from an act of authority.

Now, the mistake in the American system is made clear by (perhaps he is a relative of our friend from Benton County the greatest of all American jurists), James Wilson, but the authority which the young man seemed to understand came from the people, the distinction in the American system is that all our authority comes from the people.

I know it is the disposition of the American Law Institute (and there is where you are making the mistake) to get away from your people. You want your people behind your oars. You want part of them there, and the main grievance against the British King and the Declaration of Independence is that he refused his assent for the laws in the establishment of judiciary powers. Judiciary powers are different from judicial. They have to come from the Legislature.

My warning was you can not destroy the Legislative power, so that the powers must come from, and must be conferred by the Congress. Mr. Shelton admitted at Detroit that they cut out this second section because that would make the bill unconstitutional, so by the second section they proposed to do what ought to be done, and what it took a constitutional amendment for a provision of Indiana to consolidate, not only the Legislature but it is in your Constitution; the consolidation of a law and equity power in a single court.
So it is making a new federal court which ought to be made a code court, but I claim that you cannot confer that power on the Supreme Court, make it a legislative body. The proposition here comes from the Dean of the Law School, you have got to save these three important organizations, but the only way you can save them is through the Congress doing its duty.

So I suggest that this Committee may be continued, but it had better not go back of this bill because I don't believe when the proposition is put square up to the 83 Senators who agreed on the side that they wouldn't stand hitched, but if they do, then this question comes up before the Judiciary Committee of the House, and I am at least assured an opportunity to be heard there by Bill Martin and Bill Madden. A few lawyers need not be controlled by 83 Senators and the majority of the American Bar Association with 120,000 lawyers in the United States outside.

Mr. Hepburn: One of the most interesting things in this movement is an illustration of how history repeats itself. In 1848 New York adopted the principle of one form of action, and one court, the same court, in one action could administer law or equity, or law and equity, and it was immediately said it is unconstitutional. That same cry arose in Kentucky, Iowa, in other states, but the unconstitutional feature as respects the state courts has disappeared as a mere figure of the imagination.

The question has been raised in connection with the discussion in the Judicial Committee of the Senate, and the cases will appear in their report bearing on that question of whether this is unconstitutional. What is done is not to create a new court, the district court will remain as it is, but the difference between the administration of law and the administration of equity will not be a wall of separation between law and equity in our circuit court. We have the cause at law, we have the cause in equity. There has been nothing changed as to the substantive cause; there is nothing changed here. It is simply to remove that wall of separation between the administration of law and the administration of equity in the courts of the United States. The need for it has been pointed out. There is a rather striking statement on that subject by one of the ablest lawyers in the country, the need for this change in the betterment of the law. (Read the statement by Senator Cummins.)

Of course, if there is a question of the constitutionality of the statute, that question can and will come up later, but if we can judge by the history that has attended that same question time and time again since the year 1848, I think the answer is plain that it doesn't (this statute is carefully framed) run
counter to any constitutional provision. Certainly the Supreme Court of the United States which formerly held the doctrine of the one form of action up to scorn has changed its view. The bill has the support of the Chief Justice of the United States, and the majority at least, if not all, of the members of the Supreme Court.

MR. DAVIS: Isn't it true that the Supreme Court now prescribed rules in equity and presumes to answer questions of commerce?

MR. HEPBURN: The equity procedure is under the rules drawn by the United States Supreme Court. The same is true of the bankruptcy court; the same is true of the admiralty, and you observe that is all in the same court. The administration of law and the administration of equity are in the same court.

PRESIDENT DIX: Before the Chair recognizes Judge Ratcliff, the time has considerably passed that was set for adjournment for luncheon. What is your pleasure? Shall we continue? (Motion to adjourn.)

There is a motion before the house. Do you wish to continue discussion, or are you ready for the question?

* * * The previous question was called for and the resolution presented by Mr. Hepburn was adopted. * * *

ADJOURNMENT, 1:00.

FRIDAY AFTERNOON

July 9, 1926.

The meeting convened at two-thirty, President Dix presiding.

PRESIDENT DIX: The first business of this session will be the report of the Auditing Committee who audited the Treasurer's accounts. (Mr. Joyce was not present.)

We failed this morning to hear the report of the Committee organized to Promote Bill for Increase of Salaries of Federal Judges, of which Solon J. Carter is Chairman. Judge Carter was unable to be here, and I don't know whether any member of the Committee is here, and whether there is a report to be made or not. I think we might say in a few short words that the bill failed to pass. It has failed to reach a vote in the House.

I want to read a letter here which I received this morning which was intended to be received last night before dinner.
The letter is from our beloved friend, Colonel Charles L. Jewett, of New Albany, who as you know is one of the ex-Presidents of the Association and who had previously written me of his intention to be present at the dinner last night. He writes this letter which he says he would like to have conveyed to the Association. (Mr. Dix read the letter.)

* * * The report of the Auditing Committee was again called for, and Mr. Joyce, the Chairman, reported as follows:

We have examined the report submitted by the Treasurer containing his receipts and disbursements and have found the same to be correct; that the balance on hand at this time is $2,404.04.

We also suggest that in addition to the present records there should be a complete ledger record kept.

* * * It was voted, on motion by Mr. Joyce, duly seconded, that the report of the Auditing Committee be adopted. * * *

President Dix: In my address yesterday I took occasion to state that the great task which is now being performed by the American Law Institute is the greatest undertaking which has greeted the law profession since the time Blackstone wrote his famous Commentaries. We are very fortunate today in being able to hear the Director of the American Law Institute. I fear, Mr. Lewis, that some of us out here in Indiana have not yet fully appreciated the magnitude of this work, and it is indeed fortunate that we are able to have presented to us today the work of this Institute by its Director, Mr. William Draper Lewis, whom it is my pleasure to introduce at this time. (Applause.)

Mr. Lewis: Mr. President and Members of the Indiana Bar Association: It is a great pleasure to me to be here and to have the opportunity to speak to you of this work. My only regret is that circumstances are such that I have to leave immediately after the end of my address so that I don't have the opportunity of joining with you in the various delightful forms of entertainment by which you make these annual gatherings bearable in spite of the addresses that are inflicted upon you.

I want to say that it is always a question of doubt at this time in the work of the Institute as to how far I should go into detail, because a good many of those who are in the room are known to me to know almost as much about the Institute as I know myself. However, Mr. President, I am going to deal with a little detail in case there are persons here who do not know exactly what we are doing because the success of the enterprise depends upon the united support and sympathy of the Bar.
* * * Mr. Lewis then presented his prepared address. * * *

(Applause.)

See page 130 for address.

PRESIDENT DIX: Now, gentlemen, you heard the suggestion of Mr. Lewis that he would invite questions. Doubtless, although he has covered the subject quite fully, there may be in the minds of some of you some questions, and if so, will you please ask them?

MR. CORYELL: How will the lawyers receive copies of the restatements as published?

MR. LEWIS: There are two ways in which that can be accomplished. One is by your Bar Association officers, or a proper committee, whatever authority would have to exist to do it, to purchase in lots of twenty-five from the Institute copies of the restatements as they were issued. Either subscribe for them regularly or purchase them as they come out.

We fixed that price because we have no machinery of distribution at least except where we part with individual copies. We are trying to get a price which will just balance the expense, no more, no less. The Institute is not in the bookselling business. Therefore, you can establish a system whereby your Bar Association purchases those drafts and we do not sell to anybody in that state. They have to get them through the Bar Association. They can sell them for whatever price they wish. You couldn't prevent them from having the decision of the Supreme Court if you wanted to.

Then the other way is to have your Bar Association cooperate with us to this extent, to send to each of your members a letter stating the tentative drafts that are now out, and suggesting that the members can secure them, putting in whatever argument that they ought to to secure them, by subscribing for them or writing for individual copies to the executive offices of the Institute, 3400 Chestnut Street, Philadelphia. If your Committee, or whatever officers take hold of this matter, writes in that your Bar Association wants to subscribe, then you are treated in the first way. If not, you are treated in the second way, and we will send to the Committee or to your officers, one of two forms, or both, of a form of letter which can be altered to your local purposes to send to your members announcing that you have them in stock, or a form of letter giving the prices for individual copies, and as to how they can be obtained from the Institute. In other words, all you have to do to get it started, frankly, Mr. President, is to take either one of those two things, and I
should be very glad to furnish you with exact and accurate information.

JUDGE RATCLIFF: Do I understand that your idea at this time is to try out these restatements in the offices and the court rooms before they are finally published and see how they square up with the administration of justice?

MR. LEWIS: Yes, sir, that is what we want to do. Of course, we don't want you to necessarily confine yourself there. If you happen to get interested in a draft and read it through, and have suggestions, send it in to us. But what we do want is to put it to practical use. For instance, not long ago I got in one a month, and I thought that was a fairly good record, because we cover a comparatively small number of contracts and cases are not coming up in Supreme Court every day. I got two letters from two members from Kansas and Wisconsin, stating particular instances, and they gave me the cases where they had applied the rules of the Institute and used the draft with a great deal of simplification of their own labors in the matter.

It might well be that that very use would show that some statement in the Institute was wrong because on its face it applied to a situation which manifestly it ought not to apply to.

MR. MCCABE: I presume it is expected that after this publicity and the general acceptance, the courts of the state will follow the restatement even though the prior decisions of the courts of that state are in conflict with the restatements.

MR. LEWIS: I don't go quite that far, but I will explain how far I do go. We are bred in the common law. I hope we are all good common law lawyers. There is no law or constitution which requires a judge to follow a prior decision, but somehow or other, if it is recent, and if he has just made it himself, and the instant case is practically analogous or almost identical to the one that went before, he follows it, and if he doesn't follow it, he would be breaking the unwritten rules which make it possible to develop the common law system and carry it on and make it something different. We will have occasionally a difference in opinion.

Let me give an illustration. I never like to go too far in making a statement on this branch of the law. There might be states (and I think there are) that permit any shareholder in a corporation to retain the issuance of a share of stock having par value, share below par, even if there is no statute preventing
that. There are a number of other states which take the con-
trary view.

Now, for purposes of illustration: supposing there had been
in the State of New Mexico, we will say, the rule as I first stated,
that had been a recent case, and perhaps there were more than
one case of that kind and then this restatement comes out and
takes the opposite view, takes the view in that case, we will say,
of the great weight of authority in the United States, but not the
recent decision in the United States. Under that case if I were
sitting on the Supreme Court in New Mexico, while I would
scratch my head to see if there was any difference, I wouldn't
come around if it was identical; I would follow the precedent.
That would be the practice of every man in this room, I think.

Somebody will say to you, "How are you ever going to get the
work done?" I will make two answers to that. One is that
that is not going to happen very often. It is going to happen
in as far as it does happen, it prevents the full realization, per-
haps at least the instant realization on publication of everything
we hope for. But no one is going to be so deluded as to think
everything a man hopes is going to be brought about instantly.

The other answer is the suggestion that was made: That
perhaps when these restatements are all out, most of them on
the main subjects, years from now, and the lawyers are quite
enthusiastic about them, and there are several decisions in the
state courts which run counter or rather important practical
matters to the stand taken by the Institute, and the judges them-
selves would like to change the rules, but are compelled by reason
of complication of decisions to follow their old rule, then the
situation might be helped out by saying that these rules of law
as here expressed are prima facie authority unless in the in-
stant case equity and justice requires a different decision.

Now, had that not come from very high authority, which if
I could mention the name you would all agree was high authority,
I would say that it was a good deal of a pipe dream, and I will
say now that it is a good ways in the future. It is a possible
way out of the situation that you mention, but personally I
should go very slow. I think that what we want to do here,
we are preserving the common law system, not destroying it,
and that all that we can reasonably ask for and perhaps all we
have a right to hope is that if it does come out, there will be an
inclination, unless the circumstances will be such as to render it
impossible, to regard the statement as prima facie.

MR. BINGHAM: Isn't it in a nutshell an attempt to codify the
common law?
Mr. Lewis: Will you give a definition of codification? If you will give me that definition, I will answer.

Mr. Bingham: Just such a proceeding as you suggest.

Mr. Lewis: You mean that last suggestion of mine?

Mr. Bingham: Yes, sir.

Mr. Lewis: I remember that wasn't mine. It seems to me the orderly definition of the expression of common law and statutory code is not in its expression, but in its authority.

Now, if it has the authority which we will say attaches to such an ordinary roll of laws that except for definite recognized exceptions all contracts must have consideration to be enforceable, which in many states you won't find in any statute unless you have that situation. That is one side of it.

In other words, the orderly expression is there. If you take these restatements, you will find that they are definite sections of what could be very easily adopted by the Legislature, as far as the mechanics of it went. That is part of a statutory code, but there is no one connected with the Institute who would not fight such an action by the Legislature tooth and nail. Therefore, if you mean by codification of the law what is purposed to be an orderly expression of the law, which by statutory enactment makes it a hard and fast rule, absolutely binding on every court, no; we are opposed to that.

Mr. Bingham: I meant theoretical; just a restatement.

Mr. Lewis: If you define a code as an orderly expression of law, in short, definite, concise, clear sentences, then this is a code because that is what it is. If you define it as such a thing enacted by the Legislature, then it is not, and it is not intended to be.

Mr. C. W. Roll: Will the restatements of the law be annotated in your final drafts?

Mr. Lewis: We will leave that to the others; by annotating you mean by authorities? No, we are united as to that. In other words, if you look at these tentative drafts, you will find they are interspersed with special notes. You will find that some of them have treatises or discussions or briefs that accompany them in which all the known authorities on moot points are given.

For instance, it is one of the rules of the Council that when a section represents a conflict in existing case authority, and takes
one position or another in regard to that, that the cases that are contra and the cases in accord shall be cited in a special note, but after that full information is given the profession in these tentative drafts, and they are put out, this three or four years of discussion goes on and then they come back for revised drafts that come out; then the Institute will speak with the authority of the Institute. If it hasn’t that authority, it is no use bolstering it up with conflicting decisions. The lawyer himself who presents the matter to the court can look back at the discussions and say, “Your Honor, this is stated by the Institute, but they have acknowledged in their previous drafts that if you count the number of cases for and against this in this particular statement, they have taken the minority view as far as numbers go.”

That doesn’t happen very often, but, of course, it does happen. If you sat around the table at one of these conferences you all would agree as to this, that you had about the latitude of expressing law positively that any supreme court of any state would have. It always has to lay down the law positively and not doubtfully in the instant case and yet it may know that it is slightly extending a principle or slightly restricting it, and occasionally it may know it is not following the weight of authority throughout the country even though it is a new case, but they wouldn’t be common law lawyers if they didn’t pay great attention to authorities, carefully analyze them, and wherever they found the authorities were all one way and were overwhelming, that they were going to express the law that way irrespective of whether their own opinions were different or not. They wouldn’t be setting up their own individual opinions against the great dead weight of legal authority, but when you get an equal balance, or when you get contrary opinions, or when you get into the large number of cases where there is no direct authority at all, then all that can be legal reasoning, analysis and application to the instant case of what you think is the right rule of the law.

JUDGE EWANK: There could be instances when a Supreme Court of five judges wrote six opinions on a case in question of law. I wonder if sometimes your Council fails to get together on this expression. Doesn’t it come into the Institute that there is still a division between the different Councilors, different members of the Council, and then the Institute failed to get together on the expression?

MR. LEWIS: There has been no draft put out yet where all the men have agreed with all the statements in full. Now, where the difference is serious, they accompany their differences by a statement which is printed in a special note or brief, or
other form, which goes to the Council, and where the Council thinks that the differences are serious or important enough, those differences are called to the attention in the tentative drafts. Hereafter there will be a little more system in regard to that than there has been up to the present time. Therefore, the situation is, as Judge Ewbank has said, in the meeting of the Institute of one of the advisers getting up and saying, "I disagree with this proposition and I want to tell the Institute why", and he tells the Institute why.

In other words, nothing is gained, as far as I can see, by covering up differences of opinion. The best way to iron them out is to state them, and where they have been debated back and forth and no final conclusion has been reached by the advisers, or at least where one or two are objecting to the expression of the majority, that fact should not only be known to the Council but to the Institute, known to the Bar generally, in the hope that as three or four years pass on, those differences will tend to disappear.

Now, will they all disappear? No, of course, they won't; we deal in a subject of degree.

Mr. Hepburn: Yesterday evening I was asked this question with reference to the work of the Institute: How far down the alphabet is the Institute now? I would like to ask the Director of the Institute whether the Institute expects to take up other work for the improvement of the law besides the restatements now under way, and that of criminal procedure.

Mr. Lewis: In the first place I can explain how far we are down the alphabet by making the statement which we made to the Carnegie Corporation as to the progress of the work last month which caused them to increase the rate of payment to $140,000. It was this: That in the next four or five years all of the tentative drafts covering the law of contracts and the law of agency (we have some data on conflict of laws) would be ready for final revision. Whether the conflicts of law would be ready was a matter which we pass no judgment on at the present time.

In regard to business associations, the progress made would seem to indicate that within four or five years from now (and this is, of course, always barring any accident or death of a reporter or principal) we would be in position to get out a restatement of those portions of the law of private corporations for profit that can be usefully restated. I gave an illustration from the issuance of stock. That is one thing that could be usefully restated, but there is a good deal of law of private
corporations that could be locally restated there is no use trying
to restate. It is not common law, not even decisions growing
up about the uniform requirements. Now, so much for that.

You asked me another question. What is the question—
whether the Institute would take up any other work?

MR. HEPBURN: Than that which you now have in hand, the
restatement which you mentioned and criminal procedure.

MR. LEWIS: Of course, the restatement of the criminal law
will outlast the lifetime of the Director anyway. While these
fundamental subjects, I hope with reasonable luck to keep alive
to see in their first official draft, if you visualize even the com-
mon law, even the fundamental subjects, they are going to take
a number of years to do, beyond this first ten, this first decade
on which we are now engaged, with the progress, however, that
I have just indicated. Therefore, the restatement of the law
will remain throughout this generation of ours, at least, those
of us who are on the wrong side of fifty, the great work of
the Institute.

Now, will it undertake any other work? I think the best
answer to that is the fact that we are now undertaking other
work and how it came about. There was a report made by the
American Bar Association, as the result of the Committee on
Enforcement of the Law, to investigate the Criminal Law; that
one of the things very much needed was a revision in the shape
of a model code or a series of statutes on criminal procedure and
that committee made that report. We had a committee our-
selves to investigate the criminal procedure, whether anything
useful could be done, and we came to that conclusion. Then the
American Law School Association came to the same conclusion,
and also the American Institute of Criminal Law and Criminol-
ogy came to the same conclusion. Then those bodies began to
think about how this thing could be done and one suggestion af-
ter another was made until they all united.

First, the American Bar Association thought they would take
it up for themselves. Then they went out to get some money
and didn’t succeed because they hadn’t any organization to do
any constructive, really scientific work. They could put out
propaganda, they could make definite suggestions, they could
pass on such work but couldn’t do it. Therefore, they united
with these other associations in asking the Executive Commit-
tee or the Council of the American Institute if they wouldn’t
do it.

We were put in rather a dilemma. We had all that we could
do with our machinery at that time in the restatement of the
law. We had no money, but here was our position: the Institute is admirably well adapted to do constructive, scientific work, and then to test that out before an association which represents the best there is in the bar, to get it through, in other words, over on the profession, if I might use that expression.

We found that these people who wanted this work done had no way of getting it done effectively unless they could insure those who give money to such things that there would be a practical result, more than a mere code that would be embodied in some sort of a report. Therefore, we were obliged to say to them (and we were very glad to say to them, in a way) that we had no money; that we would be very glad, however, to undertake the doing of the scientific part of the work but not the putting it through the state legislatures, if we had the money.

Then in about five minutes here steps forward the Rockefeller Memorial and says, "We would be glad to give you money. We believe this ought to be done, and here is the money." Now we are engaged in the work and we are very glad we are. We think we are going to do a great deal of good.

It may interest those of you present to know that the first part of those series of statutes deal with arrest and preliminary hearing. We are going to face the question of the third degree in this country and make some definite suggestions on oath. We are also faced with the whole question of bail, and that we have to speak positively on before we get through. In other words, I think we are going to give plenty of food for lively discussion.

Now, I think, Mr. Hepburn, that answers your question. We are an association not for propaganda of any kind, good, bad or indifferent. We are not organized to do that work. That will have to be left to the Bar Associations of the State and the National. We are not in a position to do any scientific work which a group of not particularly lawyers, but an organization of learned men, could do as well as we. For instance, we would not have taken the suggestion that was made by somebody that we would take up the reorganization of police force in this country. We acknowledge that all those things are good, but we are confined to the thing which a lawyer as a lawyer can do better for the community than anything else. Now, if the lawyers generally want a particular piece of work done which they as lawyers are under public obligation to do for the profession because they as lawyers can do it and nobody else can, like this code of criminal procedure that we are working on, like this restatement of the law itself, and it is a thing of pressing public importance, we will do it. We are a permanent agency for the improvement of the law in the way which I have indicated.
PRESIDENT DIX: The time has passed beyond which this dis-
cussion was scheduled to last. We are all apparently very much
interested in it. The Michigan City Bar Association has
planned a motor tour for us starting at four-thirty. It is now a
quarter to four. We have considerable business to transact.
What is your pleasure? Shall we continue the discussion?

MR. JOYCE: We had better proceed.

PRESIDENT DIX: I think from the very careful attention that
you received, Mr. Lewis, and from the interesting questions
that have been asked, that you can well perceive without my tell-
ing you that the Indiana State Bar Association is interested in
the American Law Institute.

MR. LEWIS: I want to thank the members here present, not
only for listening to me with patience, but for asking questions.
It does help in the object which I am here to explain. (Applause.)

PRESIDENT DIX: Now, gentlemen, the next order of business
we will take up is the deferred report of the Committee on Re-
organization of Supreme and Appellate Courts. Judge Shea is
here now and we will hear his report. (Applause.)

JUDGE SHEA: Mr. President, Ladies and Gentlemen of the
State Bar Association: I regret that my unavoidable absence
yesterday somewhat delayed business, and I regret also that
due to unforeseen circumstances I have not been able to prepare
a written report, so that you will be relieved of the duty of
listening to a long report. It will be verbal and brief.

First, I wish to say that this Committee was appointed for
a single purpose. It was composed originally of Judge Mc-
Bride, Mr. Sam Ashby and myself. Judge McBride was called
to his reward, was missed very much because his suggestions
and comments on the work we had in hand even months ago
were helpful and quite official, and the President of the Bar
Association appointed Mr. Julian Sharpneck to supply in his
place and his work on the Committee. I am glad to say that he
has been very helpful also.

I wish to say in the first instance it has never been suggested,
and I don't think it has possibly ever occurred to anybody, that
it was the business of this Committee to assume in any sense of
the word an antagonistic attitude toward the courts. Some of
us have been members of the courts. I spent ten years of the
busiest time of my life as a member of the courts of this state,
and I know from my experience (and I state it without hesita-
tion) that the bench of the State of Indiana, as a whole, is the
hardest worked body of public officials in the State, and I know, furthermore, that they are the poorest paid body of men in the state. Therefore, this suggestion was made for the purpose of doing just exactly what the president has said (to suggest, if possible), something and propose something that would be helpful to the courts.

Now, we have been laboring long, if not well. We have to submit the results of our labor for your consideration, and it is for you to determine whether these suggestions shall be adopted.

In the first place, I shall say there has been delay in the courts of our state in reaching a final conclusion in the courts of last resort. I think everybody who has studied the situation knows that it has been due to the system rather than to any special neglect or failure in the discharge of duty of the courts themselves. We have gone into the matter in a systematic way to procure information from courts in other jurisdictions. I have in my briefcase out there a large amount of data received from the courts of the State of Illinois, the courts of the State of Ohio, the courts of the State of New York, and the Supreme Court of the United States, and some of the district and circuit courts of the surrounding territory.

I am frank to say to you that the suggestions were not unanimous and there were some rather caustic criticisms of the courts contained in some of the suggestions but a great majority of the helpful suggestions which came reached the conclusion that one court was the ideal system of a court of last resort in the state jurisdictions.

Now, that has been my own belief for sometime. I served for a term on the appellate court. I know something about its difficulties and its duties, and I know that there is delay there and that delay is unavoidable, and I know that if on any question that is committed to the Supreme Court there is delay, that is lost labor, lost activity, which ought to be devoted to something helpful and constructive, and it is my judgment that the court of last resort should have a sufficient number of members to discharge the business. Now, there may be intermediate courts with limit of jurisdiction. There may be as is the case in the Supreme Court of the United States, or the federal courts, transfer of some cases by certiorari and by writs of error, which would eliminate some of the loss, together with direct appeals such as there are in the federal courts.

Now, with those things in view, we have prepared what we believe to be the best we can do. This resolution was submitted to the general Legislative Committee and received the approval of a majority of that Committee, and was read, I un-
That was given very, very careful consideration. It was believed now with the elimination which may finally occur, if these matters go along smoothly, nine judges of the Supreme Court (even if the jurisdiction is left as it is now, which might be helped in some ways) could eventually do the work which eleven judges do now. The limit was made fifteen to cover any needed additions that might come in the next generation.

"They shall hold their offices for a period of ten years, if they so long behave well."

That is exactly in the language of the Constitution as it now stands except the change in the number of judges. That is Section 3 or Article 7 of the Constitution of the State of Indiana be amended to read as follows: "The State shall be divided into as many districts as there are judges of the Supreme Court and such districts shall be formed of contiguous territory as nearly equal in population as without dividing a county, the same can be made. One of said judges shall be elected from each district and reside therein, but said judges shall be elected by the electors of the state at large."

Up to that point it is a repetition, I think, exactly of the language of the Constitution as it now appears. This is an added statement, and it has excited some comment and some criticism. "The said court may sit in divisions or in bond under such rules and regulations as the court may devise."

It has been suggested that we are resorting to legislation in our constitution and that that should be avoided, if possible. I agree with that statement fully and wholly, but I do not concede that this violates that principle. You will find many such things as that, such statements as that, that convey the same duty upon some particular court in the federal constitution. If that clause was omitted from the Constitution, the result would be that the court by inference would have the right to make its rules. By the same token the legislature would have a right to make some rules and make some laws which would affect the attitude of the court with respect to those things, and repeatedly in the Constitution of the United States it is said that this work shall be done as herein set out and with such need of legislation as may be enacted by Congress.

I don't pretend to quote accurately, but that is the substance. It was deemed by the Committee to be wise to put that clause in the constitution so that the court might make such rules and regulations as it might deem wise rather than have it submitted to legislation.
That is the result of our labor up to this point. Now there has been careful and painstaking investigation made of the intermediate court problem outside of our own state, and some lawyers, and I may say that Judge Sharpsnack, who is a member of this Committee, has given it careful, painstaking, discrimination, for the purpose of obtaining within a reasonable period some relief that will bring about a change in the present condition in the courts. For instance, this amendment, if it is adopted by this body and submitted to the Legislature, must first of all have a majority of both houses of the next Legislature it must then go to the next Legislature under the rules of our Constitution and be again adopted and approved. Then it must be submitted to the people. It is six months from now until the Legislature meets again the first time. It will be two years until this or any other resolution is adopted. It will be two years from that time before it can be passed upon by the people, and before it can be put into operation, it will be six years, at least, and during that period of time it is the judgment of the Committee that need of legislation should be recommended by this Association for the purpose of relieving the present situation.

As I say, Judge Sharpsnack has given that careful and painstaking consideration and in the course of time, if not today some other time, he will have probably some suggestions to make about it, but at any rate this Bar Association, in our judgment, has a duty to discharge to relieve the present situation and to devise some plan or other in our humble judgment to make one Supreme Court as there is in the United States and in many other cases. I want to call your attention to one point. The language of the Constitution of the United States is slightly different from the language of the Constitution of the State of Indiana. It is slightly different, but it is essentially different when it comes to the construction of that doctrine. The Constitution of the United States says there shall be one Supreme Court, and upon that word "one Supreme Court", the Supreme Court of the United States has repeatedly and consistently held that there can be but one Supreme Court.

Now, the Constitution of the State of Indiana does not contain the word "one", but it says "the judicial system shall consist of a Supreme Court" (if I quote correctly) "such inferior courts as may be from time to time established".

Our Supreme Court in construing the judicial system has adhered very closely to the construction that has been given upon the United States constitution and—I won't say it has been harmful, but it has been influential and, therefore, I think that there may be some intermediate court that at least during the
next six years' period may do something that will be helpful and will be appreciated by the taxpayers of the State and by the members of the Bar, and especially by the litigants. (Applause.)

PRESIDENT DIX: Judge Shea, the Chair understands that your recommendations were embodied in the report and recommendations of the Legislative Committee and that you collaborated with the Legislative Committee in your work. Yesterday in the due course of business, the report of the Legislative Committee was read and action on that report was deferred until we could hear the report from your Committee, and it was decided that they should be considered together this afternoon.

Now, gentlemen, the two reports are open for your consideration, and the third Committee, as my attention is directed by Mr. Simms, the Committee on Jurisprudence and Law Report. What is the pleasure of the Association?

MR. FRASER: I move the report of the Legislative Committee be adopted as read. It covers the suggestion of Judge Shea and leaves those others. (Seconded by Mr. Roe.)

MR. SIMMS: I think everybody in the audience understands that situation. Let me state again that the Committee on Organization of Courts collaborated with the Committee on Legislation; the Committee on Organization of Courts represented by Judge Shea prepared this amendment respected the reorganization of the Supreme Court and submitted it to the Committee on Legislation to be embodied in the report the Committee was otherwise making, so if Mr. Fraser's motion were adopted it would carry the recommendations of the Committee on Legislation, and at the same time carry the recommendations made by Judge Shea's Committee which was embodied in them.

MR. BINGHAM: I take it for granted that this resolution is open for discussion at this time. I want to make these suggestions and I don't assume, of course, to be wiser than these Committees who have given this matter careful consideration and for whose judgment I have the utmost respect, but I observed that there is no limitation upon the question of eligibility to hold the office of Supreme Judge under this resolution. I observed that the length of the term is ten years. Ten years is a long time to take a bad pill, ladies and gentlemen, if you happen to get a bad one, and our fathers, you know, put a limitation.

It seems to me that in view of our political system in which influences of every kind get busy from time to time in elections, and sometimes interests that are not entirely unselfish get to work, it occurs to me that perhaps it would be a mistake to lengthen the term of office. If we have a good man we can re-
elect him, and it seems to me that it would be safer to try a member of the Supreme Bench for six years and then give him a second term, and then use him for twelve if he proved himself entirely satisfactory to the people and to the voters generally than it would to impose a ten-year term. I notice there is a limitation of fifteen. That is the maximum number that is named in the resolution.

I suppose our experience in the matter of creating judicial districts in the State of Indiana has taught us that perhaps there ought to be some limitation on the number of judges, yet if we could leave the maximum open and leave it not fewer than nine to start with, we would have a condition where it never would be necessary to amend our constitution again so far as numbers of judges are concerned.

Now, I make these suggestions, but it does occur to me that the original term of six years with eligibility for a second term, would be a safer proposition and one that would appeal to the people of our state, and that we would not be losing any of the benefits by reducing the term to six years instead of ten, and making the judge eligible for a second term. I don't think any man ought to hold office longer than twelve years. Twelve years is enough to ruin any man in office, and it seems to me that twelve years ought to be the limit and that we ought to cut the time.

MR. McCabe: You mean in a political office, don't you?

MR. BINGHAM: I mean in any office. If a man is good enough to be judge in the Supreme Courts, he ought to have some chance to show his metal as a private citizen, and if you keep him there too long, there won't be enough of him left under our present system.

* * * A motion that the question be put was made by Mr. Merrill Moores, but was temporarily withdrawn. * * *

JUDGE TRAVIS: Mr. President and Members of the Indiana State Bar Association, I doubt very much if I would take the floor upon this question had I not been upon this Committee which made the report. Inasmuch as the time is short and I know the members have suggested they are tired of waiting, I will make my objections as brief as possible.

The first thing in the report is the resolution to change the Constitution in relations to admission to the Bar. That report provides that the resolution shall be submitted to the people after being passed by two legislatures in the regular way.

Within the memory of practically every one at this meeting, and for which I have voted two or three times, we tried to amend
this constitution in relation to admission to the Bar at a regular
election. Upon that question and upon other questions in rela-
tion to the amendment of the constitution, it has been proven
in this state that we cannot amend the constitution at a regular
election. I am very enthusiastic upon this question of amend-
ing the constitution in relation to admission to the Bar.

This state started out in 1816 as a leader in this United
States with its Bar, not hampered by the constitution, and I be-
lieve that that same growth would have continued to this day
had the constitutional convention of 1851 not put the damper on
it, as it did, and under which we now exist. We proved in this
state that we can amend the constitution at a special election.

The report of my Committee last year upon Legal Education
had this to say upon this question, and submitted a resolution,
that it be submitted to the people after being passed by two legis-
latures at a special election, and alone, not connected with any
other resolution whatever, no matter how many were pending
at that time, and I think I made a tentative estimate of the
cost. I figured it up myself, at least as per precinct in the
state not to exceed $150,000. I think it would cost about $115,-
000 to pass this amendment at a special election for this pur-
pose alone. I think the value to this state in the next fifty
years would be worth $500,000 if we could take this thing out
of the constitution which is holding down the Bar of this state.

In relation to the second question, that is, the amendment of
the constitution in relation to the Supreme Court: The first
objection is merely tentative, and I wish to say in the beginning
that I am not on the floor now acting in a capacity of an ad-
vocate, but merely to state my views. I didn’t concur in this
report by the Committee of which I am a member for the rea-
son as stated before on the first proposition, and on the sec-
ond proposition. The second proposition is this, first: A con-
stitution is a basic law. Basic law should have nothing in it in re-
lation to legislative matters. The very ideal of the United States
Constitution is because it is almost entirely free of statutes. It
is purely basic, not entirely free of principles—part of it is in
principles like “all people are free and equal”, but the question
of laying down or providing for a Supreme Court is not a prin-
ciple. It is a statement of basic law.

In order to be brief on that point, I just copied; I was afraid I
couldn’t remember the Constitution of the United States. In
this state we had in the beginning a Supreme Court of three
members. The last constitutional convention in 1851 provided
not less than three nor more than five. We had in this state
just recently, not twenty years ago, this same, identical resolu-
tion in effect on that question alone, to change this constitution
to not less than five nor more than nine members. Less than ten years from that submission to the people, we had another resolution proposed to have not less than seven nor more than eleven, and now we seek to change it to not less than nine nor more than fifteen members.

Are we to change this Constitution three times in twenty years? If we would make it basic as this constitution is, that time would never come when we would change our constitution, and it ought never to come if we can make it right as a basic document.

My proposition on this question is that we make it basic, and I think it would be well to follow the United States constitution. I am willing to follow it. "The judicial power of the United States shall be vested in one Supreme Court and such inferior courts as the Congress may from time to time ordain and establish."

If we had had that kind of writing in our constitution in 1816 and in 1851 no one would have thought to tamper with it. We could change with legislation as time demanded. Why should my grandfather sit in that constitutional convention and tie the hands of my father and me and of that generation and my generation and succeeding generations, as much as to say, "My son and my grandson and my great grandson will never know enough to run their own business and provide a statutory enactment. Consequently I am the only person in my own and coming generations to say what they need and want."

I affirm if I make a mistake with my colleagues in the Legislature of this state under a pure basic statement and we were to enact provisions putting in twenty-one members in the Supreme Court and it would be too many, we can change it again in two years. I think the best government is the government provided by the people themselves—it has been finely stated that we ought to have a government by law; it would be law but if it is wrong, we can change it almost instantly.

My next objection to that part of this resolution is in relation to the abolishment of the appellate court. Since this matter came up about three years ago in the minds of some of us, (I have learned much from Judge Shea and Mr. Simms and the other members of this Committee, and I have the greatest respect) it happens that I have been in Ohio several different times, and when I have been there I have been around with lawyers and judges more than with any other people. I cite this now just as an instance of what they have over there, and not saying that it is ideal at all.

Ohio has a Supreme and an appellate court, both constitutional courts, which we could have if we had the United States Con-
stitution as part of our constitution. The appellate courts as they exist over there have twenty-four judges. They have nearly twice the population we have, and maybe we could get along with half that number. They divide the state into three districts. The judges of the nisi prius court in each district is under the thumb of the chief justice of the Supreme Court. These judges go from nisi prius court to nisi prius court. If Mr. Joyce has an appeal in Kokomo, the appellate court sits in Kokomo. The records are all there. Every attorney in the case can be there. If the clients cannot pay for attorneys' transportation, they can be gotten there, and the clients themselves are there.

The lawyers and judges in Ohio told me on many different occasions that the result of the hearing is a round table discussion, and one could not tell if he stepped into the court room who was the judge and who was the lawyer, and after they are through with that discussion of questions back and forth and sharp and quick, the lawyers themselves who are licked are satisfied, and the clients understand and see it and very few cases ever go from the appellate to the Supreme Court in Ohio. Most of the cases that go from the appellate to the Supreme Court in Ohio go upon matters of constitutionality, upon construction of laws, and such other big cases where there is sought to change the principle of law itself.

Because there are so few appeals in Ohio from the appellate to the Supreme Court, the Supreme Court has vast time to consider the very deep questions in relation to constitutional law and the construction of the statutory law. They are not crowded with anything but those questions, and if you will note the opinions of the Ohio Supreme Court, they are very few in number.

The court of Illinois is nearly like Ohio except this: In Illinois they don't elect the appellate court judges, but designate from nisi prius judges and they sit in districts; they don't travel from one to the other, but sit in a central point within the district, and something like the change in this state in the last federal law in relation to district courts.

The appellate courts in Ohio do not write opinions. The appellate court in Illinois does. The appellate division in the State of New York is made up of the trial court judges.

I want to bring this question to you which is not mentioned in the report, but should be taken up before anything else is done. You will notice in the Northeastern Reporter in the Supreme Court of New York there won't be many opinions until you strike one thing: you will see in the back fifty, sixty, seventy-five or a hundred cases from the Court of Appeals of New
York and every one memorandum opinions. In this state, there
must be written in opinions every point stated in the brief.

Since I have been in the Supreme Court we have had over a
hundred cases, and if every point were answered, and the courts
obeyed that constitution to the exact letter, if it had not other-
wise construed it, it would take one volume alone for one case not
involving very much money and not very many real questions
of law.

I think that provision of our constitution ought to be abolished
and let us get into the game like New York, Massachusetts,
Ohio, Illinois, and other states. In the Court of Appeals in
New York are seven judges divided in two sections; four to
which civil cases are taken, and three to which all the criminal
cases are taken, for final action. That might be arranged here;
the same way with our appellate court.

The fundamental question, however, I think in this report is
that if we should get a court that went to fifteen members, from
all that I have been able to learn by my talks and conversations
with judges of other states where they have had at other times
large courts, courts of many members, they find the courts get
so they are waterlogged. They can't agree. They can't trans-
act business because there are too many members of the court.

Indianapolis just a few years ago with its city charter of
the legislature reduced its council to one-half for the reason that
they couldn't transact the business in the City Council of Indian-
apolis because they had too many men and could not reach a
decision on anything. The same thing has existed in the courts
of the United States, and they have changed the constitution
back to a smaller number of judges.

That wouldn't obtain, however, as is provided in this resolu-
tion if the judges were to sit in divisions and each division be
practically supreme in itself which might make more than one
supreme court, but two or three supreme courts. There might
be some objection to that because one wouldn't know to which
division he was going unless clearly and carefully defined.

I made a good many notes, but I won't refer to them. A good
many other states, not only those with appellate courts, but those
which have no appellate courts, Michigan, Pennsylvania, and
some of the others, I have taken up, but I know everybody is
anxious to get away, and I thing you catch the drift of my opin-
ions.

MR. SIMMS: There are two points I want to answer if I may.
Perhaps Judge Shea is the one that ought to do this inasmuch
as it comes up in both courts.
With respect to the resolution relating to the admission to the Bar, the Judge could not see his way clear to join in the Committee report. I understood then and do know that one of the difficulties in his mind is the almost impossibility of getting it approved at a general election. I don't think this Committee is sold upon the proposition of whether this amendment shall be submitted at a special or a general election. What we had in mind in saying it shall be submitted in the regular way was that in our judgment we didn't think the lawyers could afford to take the shortcut provided by the Act of 1911, so I take it from what has been said that there isn't any real objection in Judge Travis' mind about this. I think he has agreed with us on the main proposition in this resolution.

Passing hastily to the other question, I want to answer the first proposition made by Mr. Bingham, that is, with respect to the extension of the time of their tenure of office. I fully agree with him that in these times it is not uncommon, or at least it happens here and there, and that groups or bodies attempt to politically influence courts. It didn't occur to either one of these Committees, so far as I was able to ascertain, that any serious objection could be made to the extension of that time, because it meets the very question which Mr. Bingham raises, if I understand the point he makes, namely, that we ought to do that which will stabilize the courts and remove it, if possible, from any such political influence that would be intended to influence it or modify its opinion, or make it subservient to any group or body that would seek to influence it from political motives. It seems to me it would stabilize the courts and do what I said yesterday, make the courts what they ought to be, if judges were given a ten-year term.

With respect to the limitations as to the number, both Mr. Bingham and Judge Travis agree upon the proposition that we leave the number unlimited. Judge Travis puts it upon the ground that we ought not to bind the hands of succeeding generations, that the time will be here so quickly when we will need more than fifteen, that we ought to leave that open, and it was left open, as we understand it, by the Constitution of the United States.

We were unable to see our way clear to join in that proposition with Judge Travis although we should very much have liked to have done so because every member of the Committee entertained the highest respect for the Judge, and we know he has given much thought to the question. But the very thing suggested by Mr. Bingham in reference to leaving it open is the one that induced us to close it as our Constitution did in 1851. For instance, there are many sitting in this room who can re-
member when the Democratic Sentinel was the organ of the Democratic Party. I dare say you can remember opening that paper when there was a headline "Damn Their Cowardly Souls", referring to the Supreme Court. If the majority had been sufficient so the Democratic Party, under the great excitement that then prevailed, could have been free to have increased the number of that court, is there any question in anybody's mind that it would have immediately, at a special session of the Legislature, if necessary, increased that court and had it filled with those who would have reversed themselves upon that? Indeed with respect to that provision in the Constitution of the United States, the older members of the profession will well remember that it was claimed upon two occasions in the history of our country that the Congress of the United States increased the number of the Supreme Judges and that the administration in power appointed those who it was designed would follow the administration to issue upon that case. Upon two occasions did that occur, in the history of our country.

Now, while I am afraid that if the power existed, and where political excitement rolled up in waves over this state on any political question and the court of nine, eleven or fifteen members happened to decide against the party in power, that if the Democratic Party were in power in the executive and legislative branches of the government, they might succumb to that influence and if their hands were tied they might increase that court to accomplish a political end and thereby prostitute that high agency of government to political ends, (I entertain that fear on behalf of the party to which I am proud to belong) I must confess that I am not wholly satisfied that our Republicans would not do the same thing. (Applause.)

One word more as to the principle involved in it, in what was suggested by Judge Travis. He said, "Shall my greatgrandfather or my grandfather tie my hands or the hands of my son with reference to the number of judges in the Supreme Court or any other matter that consists of basic law?"

Gentlemen, we were of the opinion that that is an erroneous conception of constitutional government. The people in their sovereign capacity in a representative democracy, when they make a constitution, about all they do after they set up the form of government is to tie the hands of the people at large. That is what our constitution consists of, tying our hands, because the tendency would be, if they were untied, to immediately drift from a representative democracy to a pure democracy which would be the destruction of free government in this country, so they did tie our hands. They tied them with this in view, that when you come to change organic law, you must do
it as nearly unanimously by the voice of the people as it is possible to do it. They provide a slow method of untying our hands. They tie our hands to fit the day when our hands were tied. They do it, not to take away our liberty, but to give us liberty under law. They tie our hands thus because it is the only way to secure and perpetuate free government in the form of a representative democracy. Then they provide a slow method of changing that. The son or the grandson or the great grandson is not without his right or without his remedy. If the right needs to be exercised, he calls upon those who agreed with him, and in orderly process they change it, as in this resolution it is proposed to change it now.

I don't think, gentlemen, that a body of lawyers of Indiana dare say that we are going to untie our hands, that we are going to hang at loose ends these great matters that affect the very foundation of representative democracy in Indiana. I think we had better today, all of us, agree that we have to have some kind of relief. We can't get it for a long time if we start this afternoon. Our appellate court will go on with such assistance as can be afforded it with legislative action in the interim, but we must proceed with the problem as fast as we can, to change our organic law to accomplish the purpose which all agree must be accomplished.

With respect to the traveling appellate court of Ohio, the members of the Committee were unable to agree, not with Judge Travis, because the Judge himself has indicated here, and as he said to the members of the Committee, has not had close enough association with that to see how it is going to come out.

For myself, and I think I may speak for the members of the Committee present, we were not impressed with an appellate court that boards around among the people, that travels from city to city. I myself am not impressed with a court in which you cannot tell the difference between the court and the attorneys when you get through. I am further impressed with the idea that when these traveling courts, that like our old school teachers boarded around among the patrons, come to our town and decide all the cases that are there ready for appeal and the lawyers are all satisfied with it—if that is so, they don't need any Supreme Court at all. There wouldn't be anything for the Supreme Court to do. It is true that, as Judge Travis says, great questions come up that would not require the court that had three members.

Now, for a year we have been considering these questions with Judge Shea, who has given his time and effort. We may be entirely wrong. We have tried our best to put before you the
solution of the problem, and I speak for every member of our Committee, and I venture to speak for Judge Shea's Committee, if we find we are in error, there will be no sore spot if you don't adopt this report. Our only point was to serve this Association. We have done the best we could and there is the result.

MR. MOORES: I now renew my motion for the previous question. (Seconded and carried.)

PRESIDENT DIX: The previous question is upon the adoption of the report of the Committee on Legislation. (The motion was carried.)

MR. ROE: Gentlemen of the Association, may I have your attention just for a few moments to consider an amendment to the By-laws which I think will in a large measure assist us in our membership drive. At the present time when an application is submitted to the Association it must lie over until the next annual meeting. This holds a large number in suspense, requires us to answer a great many questions, and then you will recognize when they come up here for passage they are never formally presented, so I would like to offer the following amendment to the By-laws. I move to amend Section 1, Article VIII of the By-laws to read as follows:

ARTICLE VIII

Committee on Membership

Section 1. The Board of Managers shall constitute the Executive Committee on Membership. They shall cause thirty days' notice to be given in the Indiana Law Journal containing the applicant's name and address together with the names of the parties recommending such applicant. If no objections to the applicant have been filed with the Secretary of the Association within said thirty days, the Board of Managers shall at its next meeting elect or reject such applicant. If objections have been filed to the admission of any applicant, it shall be submitted to the next annual meeting for disposition.

Mr. Chairman, I move the adoption of the amendment. (Seconded.)

PRESIDENT DIX: Any discussion? All in favor of the motion, say "aye".

* * * The amendment was carried * * *

MR. FRASER: I rise to renew the motion I made this morning, that the report of the Committee on Jurisprudence, Mr. Steven-
son's Committee, be adopted except the clause relating to the transfer of misdemeanor causes to the appellate court. (Seconded.)

MR. STEVENSON: I have a right to know the reasons why Mr. Fraser makes that recommendation. May I call attention to the fact that the May calendar of the two courts, appellate and Supreme, show that in the Supreme Court there are 397 cases pending; of that number, 251 are criminal. In the appellate are 409 cases. In the cases decided by the appellate court, 300 a year, about 90% of those, there is application or petition for rehearing of those cases, about 50% there is application of transfer, so the Supreme Court has to consider something over 500 cases.

It seemed to this Committee that it would be proper that misdemeanor cases should go to the appellate court. There is this additional reason that I want to close with. We want to give you our idea. In every case decided by the Supreme Court, it must write every opinion on the brief. That is not true of the appellate court. The appellate court can affirm cases per curiam.

We think the recommendation of the Committee should be adopted.

PRESIDENT DIX: The motion is to adopt the report of the Committee on Jurisprudence and Law Reform with the amendment suggested by Mr. Fraser.

MR. STEVENSON: I move to amend that by adopting the report of the Committee in toto.

MR. FRASER: I move to lay the motion to adopt that report in toto on the table. (Seconded by Mr. Davis.)

PRESIDENT DIX: Moved and seconded to lay the amendment to the original motion on the table. (Motion was lost.)

Now, the motion on the amendment to the original motion is that the report be adopted in toto. (Carried.)

The ayes have it and the motion is carried. The motion is now on the original motion amended which is in substance, amended, namely, that the report be accepted in toto. (Carried.)

MR. STEVENSON: One thing more, the Committee also recommended this, and I felt my duty to follow out. It is a provision for amendment of the by-laws of the Association providing for an additional Committee on Appointment, Nomination and Election of Judges. There are eight of those in the present By-
laws. We add a ninth committee, on Appointment, Nomination and Election of Judges:

"Be it resolved that Section 1, of Article 5 of the By-Laws of the Indiana State Bar Association be amended so as to read as follows:


"Be it resolved that a new article be added to the By-laws of the Indiana State Bar Association to be known as Article XII-A, and reading as follows:

XII-A

COMMITTEE ON APPOINTMENT, NOMINATION AND ELECTION OF JUDGES

"The Committee on Appointment, Nomination and Election of Judges shall consist of seven members, together with the President and Secretary of the Association.

"It shall be the duty of this Committee to consult and advise with the Governor of Indiana and other appointing powers in the State regarding the appointment of judges to fill vacancies, with conventions and other bodies regarding the nomination of judges; and generally to consult and advise regarding the appointment and selection of judges for courts in the state."

I move the adoption of these resolutions.

* * * The motion was seconded by Mr. Bingham and carried * * *

JUDGE COLLINS: I want to present a resolution:

"Whereas twenty-one years have passed since there has been a revision of the Criminal Code of Indiana; therefore, be it

"RESOLVED That the Indiana Bar Association recommend that a commission be appointed at the next session of the Legislature to revise the Criminal Code”.

Mr. President, I move the adoption of the resolution.

* * * The motion was seconded by Mr. Davis and carried. * * *

JUDGE COLLINS: Now, I desire to make this motion.

Moved by Collins, seconded by Simms:

Resolved, That the incoming President, as soon as may be, appoint a committee of such number as in his judgment may seem fit, to draft a
revision of the criminal code of Indiana, or propose amendments thereto and submit the same to the Board of Managers and, with the approval of the Board, submit the same to the membership and present to the General Assembly for enactment as much thereof as may have the approval of a majority of the membership and the approval of the Board.

* * * The motion was seconded by Mr. Simms and carried * * *

Mr. Dan Link: "WHEREAS it was the theory of our forefathers that the best form of government was one divided into three branches, to-wit, the Legislative, Executive, and Judicial, the Legislative of which was to be the forum of expression of popular will and the enactment of such popular will into laws, and the execution of laws by the Executive, and there was reposed in the Judicial Department the sole and exclusive power of interpreting such laws and the more solemn and important duty of interpreting them in light of the constitution of the United States by which all American citizens were to be bound,

"AND WHEREAS the perpetuity of the fundamental rights guaranteed by the Constitution must always depend upon the integrity and independence of the Judiciary,

"AND WHEREAS there has been a growing tendency in recent years to involve the Judiciary in the conflict of political opinions and controversies and to intimidate and coerce members of the Judiciary and those who are candidates for judicial office to commit themselves to the interpretation and construction of the constitutional rights of the people in consonance with the several opinions held by certain organizations, thereby prejudging causes that thereafter may come before the courts and seeking to deprive the citizenship of its right to a fair and impartial hearing before the courts,

"AND WHEREAS it is the opinion of this association that the increase in the tendency to thus invade the judicial department of the government constitutes a grave menace to the welfare of the people and the integrity of their constitutional rights,

"NOW, THEREFORE BE IT RESOLVED that we condemn any attempt on the part of any organization whatsoever to intimidate or coerce the courts in the discharge of their judicial duties or to commit candidates for judicial office to the prejudgment of any cause likely to come before the courts for adjudication.

"BE IT FURTHER RESOLVED that attention of the citizenship of the State of Indiana be called to the gravity of the
situation imperiling their liberties and rights under the Constitution arising from the growing efforts of organizations to control judicial actions.

Mr. President, I move the adoption of the resolution.

MR. BINGHAM: I think the adoption of that resolution would be a grave mistake. We all know the rights of the individual citizen and the rights of the press are sacred and guarded by the Constitution, and our courts are perfectly competent to deal with those questions. I doubt if a very large percentage of the members of this Association present here today have carefully considered the publication at which this resolution is directed, and I doubt if they are prepared to act upon it. I assume that most of the information that we have on this subject comes to us through newspapers, the very unreliable source, and since I happen to be one of the counsel involved in this sort of a case, and in the case at which this has been directed, and I have been a member of this Association almost since its organization and we have fought this sort of thing from the beginning of its organization down to this very moment, I think it would be a mistake for this Association to undertake to influence or express itself as directly upon the questions that are involved in litigation here as this resolution proposes. I am, therefore, unalterably opposed to the adoption of this resolution, and I appeal to the membership of this Bar Association here and now to everlastingly put their foot down on this sort of action in this sort of an organization.

* * * Calls for question * * *

PRESIDENT DIX: The question is upon the adoption of the motion to adopt the resolution. I don't want to stifle discussion. There has been no motion for the previous question.

MR. MCCABE: I think General Bingham is absolutely right. My reverence and love for the Supreme Court and its high authority, and my reverence and love for this organization is such that I feel that we would be making a mistake of a lifetime to adopt this resolution at this time. That is all I have to say.

MR. LAFOLLETTE: I would like to say that I don't believe the resolution means what Mr. Bingham thinks it does. I am opposed to the resolution because it indicates that the courts might be disposed or driven to do that which they don't believe. I have a higher respect than that for the courts. I don't want to say that they might be influenced by any influence. They are men of courage and do their duty. Therefore, I am opposed to the resolution.
It was voted, on motion duly seconded, that the resolution be laid on the table.

MR. HATFIELD: I have a resolution to present. Article V, I think it is, of the Constitution, sets out what the officers of this Association are. The article provides among the other officers of the Association there shall be a Secretary and a Treasurer; that same article of the Constitution provides that the By-laws may provide that the office of Secretary and Treasurer may be occupied by one man. There has been a growing feeling for some years past that the two offices of Secretary and Treasurer ought to be in one man; not combine the offices, but put it in one man. The many duties devolving upon the Secretary and correspondingly light duties devolving upon the Treasurer makes it highly important, I think, at this time that the one man occupy both of these offices, and that his remuneration should be sufficient to justify him in giving the service that it requires.

I, Therefore, move an amendment of Article IV of the By-laws which sets out the duties of the Secretary and Treasurer as follows: I am proposing a new section for Article IV, designated as Section 1:

"Section 1. The office of Secretary and the office of Treasurer shall be filled by the same person. His compensation shall be fixed by the Board of Managers at not exceeding $600.00 per annum, and the Board shall reimburse him for the expense of such stenographic services and traveling expenses as may to them seem proper.

"Second: By renumbering Section 1 as Section 2 and by striking out the words "and shall promptly furnish the Treasurer with the names and addresses of all new members", and by striking out the last sentence thereof.

"Third: By striking out the number of Section 2 and by striking out the last sentence thereof." I move the adoption.

* * * The amended Article IV of the By-laws would read as follows:

**ARTICLE IV.**

Section 1. The office of Secretary and the office of Treasurer shall be filled by the same person. His compensation shall be fixed by the Board of Managers at not exceeding $600.00 per annum and the Board shall reimburse him for the expense of such stenographic services and traveling expenses as may to them seem proper.

Section 2. The Secretary shall keep a record of the proceedings of the Association and the Board of Managers and all mat-
ters of which a record shall be ordered by the Association or Board of Managers. He shall keep an accurate roll of the officers and members of the Association; shall notify officers and members of the committees of their election or appointment, and shall notify new members of their election. He shall issue notices of all meetings with a brief note in case of special meetings of the object for which they are called—notice of the annual meeting to be issued at least thirty days prior thereto. He shall, upon the order of the respective chairmen thereof, issue calls for all committee meetings. He shall superintend the publications of the Association as directed by the Board of Managers, and shall be the custodian of the records, archives, and seal of the Association.

The Treasurer shall keep at all times a complete roll of the members, shall demand, receive and receipt for all moneys due to the Association, and shall safely keep and disburse the same under the direction of the Board of Managers. At each annual meeting he shall make a written itemized report of his receipts and disbursements.

* * * * The motion to adopt was seconded by Mr. Davis, and carried * * *

MR. MCCABE: While we are on miscellaneous business, I desire to move that a vote of very sincere thanks and appreciation be extended to the Michigan City Bar Association and to the Chamber of Commerce for the cordial welcome given to the Indiana Bar Association on this occasion.

MR. HATFIELD: Why not add to that the very kind service of the ladies of Michigan City?

MR. MCCABE: I accept the amendment. * * * The motion was seconded and unanimously carried *

MR. SIMMS: I move the appointment of a committee—I don’t know what its name should be—of five, whose duty it shall be to get in touch with and secure preliminary statements from the American Law Institute and to acquire the ballot which would enable the membership to know whether they want to subscribe, and in what manner they want to subscribe, and that they be directed to report the result of their investigation to the Board of Managers, and that the Board of Managers be clothed with power to adopt or reject their recommendation. * * * The motion was seconded and carried * * *

PRESIDENT DIX: The Committee will be appointed by the incoming President.
Any other business, before we come to the Election of Officers? If not, we will now proceed with the Election of Officers, the first officer being that of President.

**MR. MOORES:** I nominate Mr. William A. Pickens.

**The nomination was seconded. It was unanimously voted, upon motion by Mr. Don Fraser, duly seconded, that the rules be suspended and Mr. Pickens be declared elected.**

**PRESIDENT DIX:** Who shall be our Vice-President?

**MR. MCCABE:** I desire to place in nomination for Vice-President James A. Van Osdol. (Seconded.)

**It was unanimously voted, on motion by Mr. Stevens, duly seconded, that the Secretary be instructed to cast the ballot for James Van Osdol, as Vice-President.**

**MR. FRASER:** I move that the present Board of Managers be reelected. (Seconded by Judge Collins.)

**MR. HATFIELD:** I move to amend that motion by substituting the name of Frank Richman of Columbus, instead of Mr. Walker. I happen to know that Mr. Walker of my city desires that to be done.

**MR. FRASER:** I accept the amendment.

**The Board of Managers are: James M. Ogden, Willis E. Roe and Frank Richman.**

**It was voted, on motion by Mr. Simms, duly seconded that the rules be suspended and that the record be made to show that these gentlemen are duly elected.**

**PRESIDENT DIX:** Who will you have for Secretary and Treasurer?

**MR. HATFIELD:** Joel A. Baker.

**It was unanimously voted, on motion by Mr. Simms, duly seconded, that the rules be suspended and that Joel A. Baker be duly and legally elected Secretary and Treasurer.**

**CAPTAIN SALSBURY:** I desire to thank the Association for the courtesy that has been shown me in the last twenty years. For ten years I was Chairman of the Committee on Membership. Today closes my fourteen years as Treasurer of the Association. (Applause.) You have seen fit to abolish the office, and I thank you for so doing. It has not only been a pleasure, but it has been arduous in former years; when the Chairman of the Committee on Membership and the office of Treasurer was combined, it was quite arduous indeed. I have done it without murmur, and I thank you for the opportunity of service. I would be
pleased at any time to do what I can to further the interests of the Association. I am glad now to be relieved of the duties that I can take my position on the floor as other members have here-tofore done. (Enthusiastic applause.)

MR. DAVIS: I move we adjourn sine die.

ADJOURNMENT, 4:30.

I

THE PROGRESS OF THE LAW
By GEORGE OSCAR DIX

The basic law for the government and guidance of mankind does not change. The application and the administration of the law do change, however, as they should with the march of civilization. Second in importance to the law itself are its administration and its application to changed conditions.

Man was given the instincts of love and self-preservation, the ability to reason, and the desire for social communion. These four inborn instincts and attributes of man are the basis for all human law, the foundation for the thing which we commonly call the law. By instinct and experience, man discovered that it was not intended that he should live alone, and that he bore a certain relation to his fellowman. In the beginning, this realization was not highly developed, but it has always been present in every human being whose mental level has reached the power to reason. The most savage tribesman recognizes that his fellow tribesman has certain rights, and that he himself owes certain duties to his tribe. The development of these rights and duties is the progress of the law.

The development of the rules governing the conduct and relations of man to his fellowman is the most important element in the advance of civilization. This always has been and ever will be the work of the lawyer. No greater responsibility has ever rested upon any part of the human race. How well the responsibility has been met is attested by civilization.

The lawyer does not, nor can he make the laws governing the dwelling together of mankind. His place is to analyze, interpret, clarify, and simplify the complex rules which instinct and social experience have taught us are necessary for the government of human conduct.

Moses is usually referred to as a lawgiver. He was not a lawgiver in the sense that he created or received the ten com-
mandments and gave them to his people. "Thou shalt not kill," "Thou shalt not steal," "Thou shalt not bear false witness," were as much the law before Moses went up into Mount Sinai as they were when he came down, and they are as much the law today as they were then. Moses played merely the part of a commentator, a codifier, a law institute. He took the mass of rules which the instincts and experience of his people had told them should be their rules of conduct and analyzed them and simplified them and restated them in a definite number of sections.

Moses, in his wisdom, knew that he could not successfully promulgate a rule which would restrain his fellowmen from doing a thing which their instincts told them it was right and proper for them to do, nor a rule which their instincts told them was an injustice. He knew that he could not promulgate a rule which would run counter to the crystallized public sentiment of his day. Thousands of autocratic rulers since the time of Moses have tried it, and either by force of arms, or by taking advantage of the religious fervor or the superstition of their subjects, have for varying periods been successful, but sooner or later, they have always failed. On the other hand, a majority of the rules, both criminal and civil, promulgated by Moses are at least in principle still the law in all civilized lands.

What better statement of certain principles of the present-day law of negligence can be found than this rule: "If a man shall open a pit, or if a man shall dig a pit and not cover it, and an ox or an ass fall therein, the owner of the pit shall make it good and give money unto the owner of them", or "If fire break out and catch in thorns so that stacks of corn or standing corn or the field be consumed therewith, he that kindled the fire shall surely make restitution."

The basic human instincts do not change, but their application to the conditions of life does change as civilization progresses, as men become more intelligent and refined, as the earth becomes more populated, and as science advances. One of the crowning glories of the law is its elasticity and its adaptability to new conditions.

These changes do not come about suddenly however, and during the process of their arrival, there occurs the natural and inevitable conflict between human minds. In each period of great change, the group which is in advance, or at least believes itself to be in advance, finds or fancies that it finds itself blocked by the law and so sets up a great hue and cry against the law and the lawyer as being foes of progress whose prestige and influence must be overthrown if mankind is to go
forward. When the tumult and shouting die, however, and human affairs again resume their more tranquil course, it has always been found that the law has kept a steady keel and has during the process adjusted itself to the changed conditions.

Progress in the law has not always been continuous, and the movement has not always been forward. This is true of all human progress. It sometimes seems necessary to go back a few steps in order to get a good start to go forward. It is the backward movement which awakens and stimulates public sentiment to go forward. Although the individual frequently errs in his interpretation of the mass instinct, he usually stays close to it and eventually gets back to it.

Man-made laws are not always founded on unanimous opinion. It sometimes happens that a minority, or a bare majority, secures the passage of a law which conforms to its views of what is correct and desirable on a given subject. The difficulties of enforcing such a law which we say is not approved by public sentiment, are well known. The attempts to legislate against the use of intoxicating liquor in this country are a poignant example of this principle, and we may expect the bitter conflict over the enforcement of these laws to continue until the mass mind more nearly crystallizes one way or the other.

We enact laws on the assumption that, when the legislature has written its will into a statute, human sentiment will immediately change in accordance with the provisions of the written law, and will obey the law because it is thus written; yet all past records teach us that there is a vast difference between law in repose and law in action, and that it is far better to have a mediocre law, which is backed by public sentiment, and which can therefore be enforced, than a perfect law which is not supported by public sentiment and is constantly disregarded.

The progress of the law is sometimes not as swift as the progress of science. The past century has undoubtedly brought much greater advancement in the sciences than it has in the law. Development in science does not depend upon the mass mind or public sentiment as does development in the law. Progress in science, therefore, may be, and often is abrupt and epochal. A much-quoted recent publication declares that the world has made more progress in chemistry in the ten years which have elapsed since the war than it made in the thousand years which preceded them. The same authority states that during this period the chemist has not only succeeded in duplicating many of the products of nature's laboratory, but has actually improved upon nature's products, and has so reduced
the cost, that often a thing which sold for $100.00 an ounce on Monday can be purchased for ten cents a pound by Friday.

Witnessing these great advances in the field of science, the unthinking public can not understand why the law does not advance with equal rapidity. The enormous increase in crime in this country, and the delay, and oftentimes the failure, in the administration of the criminal law, are cited as evidences of retrogression rather than progress. This is not true. The law is not retrogressing; the mass mind is merely advancing.

Our basic criminal procedure is the product of the mass mind of a century or more ago. Our forebears had suffered under the kingly prerogative and had witnessed the ease with which innocent men could be accused of crime, thrown into dungeons, sentenced, and executed. Public sentiment of the time strongly demanded protection for all persons charged with crime. This protection was written into the Bill of Rights of the United States Constitution, and into the Constitution of almost every state, and has been reflected in legislative enactments and court decisions until it is now perhaps the most strongly entrenched legal doctrine in this land.

The right to be free from unreasonable searches and seizures, not to be required to be a witness against himself, to be confronted with the witnesses against him, to have a trial by a jury of the county where the crime was alleged to have been committed, the verdict of which must be unanimous, to have the jury determine the law, as well as the facts, have been sacred doctrines in this country. They are all the result of the oft-expressed public sentiment that it were better that a thousand guilty men go free than that one innocent man be punished.

Just how far the mass mind has moved away from this eighteenth century doctrine is a debatable question. The fact that a certain public sentiment today seems to demand a more sure and speedy punishment of crime, and the fact that many organized bodies, including The American Law Institute and Commissions appointed in several of the states, and in some of the larger cities, are studying the problem, is evidence that a change is going on but I doubt whether public sentiment has yet reached the point where it would be possible to strike from the Bill of Rights any of these provisions, which have now become a protection for the criminal as well as for the innocent.

Unfortunately there is still rampant in this country a mawkish sentimentality for men and women charged with crimes. Usually, the more diabolical and inexcusable the crime, the more pronounced the sentimentality. Because of the notoriety given the trial, and the subsequent events connected with the execution of Gerald Chapman, he epitomizes in the minds of
many the extreme lawlessness that is rampant, and which shoots
down human beings with as much unconcern as the law-abiding
citizen would have in killing a fly; yet respectable newspapers
have carried articles attempting to justify his acts, and to blame
society, and in the eyes of many he is today either a hero or a
martyr.

The mass mind, although undoubtedly beginning to realize the
over-protection given to persons charged with crime, is perhaps
not yet ready to surrender this protection which generations
ago it fought so hard to secure. It may be possible, by legisla-
tive enactments, and by revision of court procedure, to improve
the administration of the criminal laws; but not until public
sentiment permits the repeal of some of the fundamental pro-
visions for the protection of those accused of crime, can we
hope for any decided progress in the administration of criminal
justice.

The administration of criminal justice being the more spec-
tacular is more in the public eye than is the administration of
civil justice. However, progress in the application and admin-
istration of the civil law is quite as important to the advance
of civilization as is progress in the criminal law. In actual
practice by far the greater number of the people is directly
affected by the civil rather than the criminal law.

Litigants have long been demanding a more speedy, and
hence a more economical, administration of civil justice. The
delay of the law is considered by some economists as the great-
est present obstacle in the business world. Every lawyer knows
that it is the source of a very great economic waste, that it
frequently produces an absolute miscarriage of justice, and is
often deliberately employed for that purpose, and that his clients
are coming more and more to the view that it is better to settle
their cases out of court at a considerable loss rather than
encounter the delays of a law suit. Settlement of disputes in
proper cases is, of course, to be encouraged, but when the well-
known delay of the law is deliberately used as a weapon to force
an unjust settlement, it becomes a dangerous and needless men-
ace to business, and a just cause for criticism of our present-day
legal system. The lawyer himself suffers serious loss of in-
come because of his inability to furnish that prompt and effi-
cient service for which his clients would be glad to pay, if it were
available. To the client who is forced to stand by helplessly
and see his meritorious cause defeated by dilatory tactics, the
delays of the law become nothing less than a tragedy.

The opinion once prevailed that relief from the delays of
the law could be brought about only by a reform in procedure,

hence the movement some years ago which resulted in the adop-
tion of codes in nearly all of the states. Procedural reform, although helpful, did not, however, prove to be a solution of the difficulty, and it became necessary to seek for a further means of relief. Then came the movement for the unification of the courts, and a recognition of the principle that the whole judicial power of each state, at least for civil causes, should be vested in one great court, of which all tribunals should be branches, departments, or divisions. This principle had been recognized and put into effect in Great Britain long before it received serious consideration here. It can not be doubted that the superior efficiency of the British Courts is attributable in part to the organization of their judicial tribunals.

In no department of human activity, where the work is on anything but a very small scale, can a high degree of efficiency be attained without organization. There must be an executive head with power to assign the work, and assume the responsibility for its performance. These are universal truths recognized as fundamental to the conservation of human energy. They are at the foundation of military science. Modern quantity production would be impossible without them. The members of the legal profession are now beginning to perceive their application to the courts and to the administration of justice. Some progress is being made in the matter of organization and unification of our courts. In some of the large cities where the greatest congestion has occurred, good results have been accomplished; yet it is obvious to anyone who makes more than a superficial study of law administration in this country that the real solution of the problem has not yet been reached.

We must find this solution elsewhere than in the adoption of more or different rules of procedure or the more systematic organization of the courts. These things have undoubtedly helped, but to attain final success we must go deeper and reach the underlying forces which control the processes of law administration. We must change the mental attitude of the profession itself and bring both the bench and the bar to a realization that the administration of the law is not a game to be played for the personal aggrandizement of the players, but is a system which has for its sole object the fair and speedy administration of justice between the litigants. The conduct of a case should not consist, as it too often does, mainly in the juggling of the lawyers for position, but should be considered as an orderly presentation of the facts and the application of the law thereto. It should always be borne in mind, by both the bench and bar, that the law is a learned profession and not a pettyfogging trade, and when this is generally realized and generally put into
practice, there will be little cause for complaint against the administration of the law.

One way to accomplish, or at least approximate, this result, is by improving the standards for admission to the profession and by making it easy and popular to rid the profession of those who refuse to live up to those principles. No stream can rise above its source, and we can never hope to have efficient law administration until we improve the morale of, and increase the public respect for, those whose duty it is to administer the law. Such results can not be accomplished in a day, nor without effect. It is obvious that general progress is being made in this country, and that definite progress is being made in this state, which only little more than a half century ago provided in its Constitution the same qualifications for the practice of law as for the operation of a saloon.

The public impatiently looks to the bar for a correction of the present-day evils in the administration of both the criminal and civil branches of the law unmindful of the fact that progress in the law moves slowly, and only when a unified public sentiment has led the way.

Those who fear that the law is not keeping pace with the times should study the whole period of Anglo-Saxon jurisprudence. It is unnecessary to go back of the Norman Conquest. Our English law may at least conveniently be considered as having started at that period. The Norman Conquest introduced into the Anglo-Saxon system the Curia Regis which was both a judicial and a legislative body. There is much doubt as to the personnel of the Curia Regis. That the great barons and high dignitaries of the church were members is certain, but there is also some evidence that lesser officials and members of the king's personal household were included. All authorities agree that the body was large and unwieldy and sometime disorderly. All trials of members of the nobility and of the church were submitted to the Curia Regis. Among the first of the recorded accounts of proceedings before this body was an unofficial report of the suit of the Bishop of Durham, for the recovery of his landed estates, which had been confiscated by the King for alleged treason. The trial occurred in 1088. The Court was made up of a large number of bishops, lay nobles, and minor officials; and although the procedure appeared to be ultra-technical, the decisions, both intermediate and final, were those of the mob.

The earliest mode of trial, for those of inferior rank, was by "ordeal" of fire or water. "Ordeal" was regarded as a religious rite and was conducted in the churches. If the "ordeal" was by fire, the accused in the presence of his accuser was required
to plunge his naked hand and arm into boiling water. If his hand or arm came out uninjured, he was declared innocent; if not, he was declared guilty. In some cases, instead of plunging his hand into the hot water, he was required to carry a hot iron in his naked hand a distance of nine times the length of his foot. His hand would then be bandaged for three days, and if at the end of that time his hand appeared uninjured, he was declared innocent, otherwise he was declared guilty. If the "ordeal" was by water, the thumbs of the accused were tied to this toes, and he was then thrown into the water. If he sank, he was considered innocent if he floated, he was guilty. It was a case of death by drowning if he was innocent or death at the hands of the State if he was guilty.

Following these modes of trial, came the trial by "combat". The accuser was required to support his charge against the accused by personal combat. Gradually the custom sprang up of permitting the accuser and the accused to appear by professional representatives or combatants, and thus we have the beginning of the legal advocate in Anglo-Saxon jurisprudence.

Following the trial by "combat" came the trial by jury. In its inception, it was a crude affair. Personal knowledge of the facts on the part of the jurors was a necessary qualification for their office, and it was not until many years later that the jury assumed any other character. Juries, even as late as the middle of the seventeenth century, were subject to fine and imprisonment for returning what the Judge considered an erroneous verdict. The jury system was thus little more than a farce. The will of the Judges controlled the verdict. The Judges were all appointed by the King and were subject to his will. The Judges of the time were notoriously dishonest and were themselves frequently committed to prison by the crown. Even so great a jurist as Lord Bacon is said to have served a term in the Tower for bribery.

The criminal law was as cruel and brutal as that of any uncivilized tribe. As late as the end of the eighteenth century, the number of statutory offenses punishable by death was not less than one hundred sixty, which meant that in the great majority of these, the punishment obviously did not fit the crime. The laws were a confused mass of statutes and conflicting precedents. It was not until 1765, when Blackstone published the first volume of his famous "Commentaries", that any serious attempt was made to bring the law of England into one harmonious whole. The publication of these "Commentaries" was a great milestone in the progress of the law, both in England and in this country. Blackstone performed the difficult task of reducing to orderly statement and to an approximately scien-
tific form the disordered bulk of the common law. His treatment of the subject was so orderly, his statements were so clear, and his literary style was so pleasing, that the work was read and understood by laymen as well as lawyers, and for the first time in its history, the English Law became a concrete, living, understandable thing.

The principles of human liberty, now known to every child, were then in their formative period. Blackstone analyzed these principles and applied the common law of England to them. His readers learned that the principal aim of society was to protect individuals in the enjoyment of those absolute rights which were vested in them by the immutable laws of nature; they read of the absolute rights of individuals, generally denominated the natural liberty of mankind, which could be restrained by man-made laws only to the extent that "it is necessary and expedient for the general advantage of the public"; they read that the protection afforded by rules of law administered by an independent and impartial judiciary were absolute essentials to the maintenance of civil liberty.

Almost as many sets of the "Commentaries" were sold in this country as were sold in England, and during the year preceding the Revolution were used in William and Mary College in Virginia as one of the texts in the regular course of instruction. The extended reading and study of Blackstone in this country at this particular period doubtless had a marked influence upon the development of the American Republic. John Marshall, James Madison, James Monroe, Thomas Jefferson, and other young men of the time, who were later to become the founders and builders of the American Republic, were students of Blackstone at William and Mary College. Some historians have declared that the "Commentaries" was the most potent influence in the shaping of our form of government. The influence of this great work on the mind of Jefferson is reflected in his affirmation in the Declaration of Independence that all men are born with certain inalienable rights, among which are life, liberty and the pursuit of happiness, and that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. Even to a greater extent can the influence of Blackstone be traced in the Constitution. That the monarchial Blackstone contributed so practically to the establishment of democracy in America has been declared to be a paradox without parallel in history.

Much of the law as stated by Blackstone has, in the course of time, now become obsolete in England as well as in America. Simplification in pleading and practice, the abrogation of the old technical law of real property, the marked reduction in the
number of crimes punishable by death, the advancement of science, the great increase in population, and many other changed conditions have relegated Blackstone to the position of a historical figure rather than the vital force which he was to the lawyer and law students of fifty years ago. The turning of the wheel of progress has made Blackstone a shadowy figure of the past, but coming up on the other side of the wheel is The American Law Institute, which is guided by the same spirit which inspired Blackstone to write is Commentaries more than a century and a half ago. The great task of restating the doctrines of the common law which is now engaging the attention of our profession is the most significant single undertaking which the law has witnessed since Blackstone gave his great work to the English people. The value and importance of this effort and of the efforts of other agencies to improve our legal system can not be doubted. If the law is to perform its appointed function of furnishing a perfect system for the administering of justice among men, it must at all times keep pace with other phases of human progress.

During the century and a half since Blackstone wrote his Commentaries, the administration of the law, and its application to living conditions, have almost completely changed. Dean Pound has compared the legal precepts in most common use in America at the end of each fifty-year period, beginning in 1774 and ending in 1924. Of the reported cases of the period of 1774 but one, a case of bills and notes, may be regarded today as living law. The remainder of the cases of that period had to do with the law of slavery, the old law of real property, the law of the state church, and the technicalities of the old common law practice. Passing to the year 1824, he finds that sixty per cent. of the cases dealt with the technicalities of common law pleading and practice. Next in order came cases of imprisonment for debt, and in third place were cases on the old technical law of real property, which, however, was beginning to show signs of dissolution. New subjects, such as corporations, agency, insurance and sale of goods were also to be found. In 1874 the railroads had changed the face of things and torts stood first in the number of reported cases. Contracts and insurance came next, followed by agency and pleading and practice. The three leading subjects, however, comprised less than forty per cent. of the reported cases, and a multitude of new subjects had arisen. Coming to 1924, he finds that about twenty per cent. of the reported cases had to do with torts; next in order came taxation, an entirely new subject-matter. Contracts came third, closely followed by Workmen's Compensation, another new subject-matter. Procedure, the staple of the law one hun-
dred years ago, had fallen to three per cent. of the reported cases. The 1924 reports also disclosed an entirely new type of tribunal, the executive board or commission, something which was quite unknown even fifty years ago.

If we turn from the law reports to the statute books, he tells us we shall find the same evidence of continuous and entire change. The scanty legislation of the period of 1774 had to do chiefly with providing for the public safety in what was still a pioneer society. Beyond that it was taken up with introducing cautious modifications of the English land law and common law procedure and with the process of imprisonment for debt. In 1824 the state statute books were taken up chiefly with special legislation relating to private corporations, with organization of courts, and with the legislative overhauling of criminal law and civil procedure. In 1874 the subjects of legislation had notably increased. General laws had taken the place of the special acts of incorporation and special laws for municipal corporations which had filled the statute books of fifty years before. Regulation of public utilities, a wholly new subject, was being cautiously introduced, and laws governing the practice of the professions, health laws, and laws regulating the sale of liquor, indicated the beginning of what was to be the characteristic legislation of the next generation.

When we take up the session laws of 1923, legislative activity is in evidence in every field. In the session laws of the different states social legislation of a type quite unknown to the past is represented by Workmen's Compensation statutes, rehabilitation laws, town-planning laws, laws for the conservation of natural resources, housing laws, children's acts, and laws regulating the exercise of trades. Regulative liquor laws are replaced by drastic provisions prohibiting the sale of liquor and narcotic drugs. Highway Acts tell of the advent and establishment of the automobile.

Along with the change in the subject-matter in the past century and a half, there has been an enormous increase in the variety of the subjects dealt with, both in the decisions and the statutes. There has also been an increase in the reported cases quite out of proportion to the increase in population. A hundred years ago, the whole number of volume of American Reports was less than four hundred; today it is more than twelve thousand.

The work of the lawyer, the every-day practice of the profession, has almost completely changed in this country in the past century, or even in the past fifty years. The rise of the great business and industrial organizations, the increased governmental control and regulation of transportation, of com-
merce, of public utilities, and of other quasi-public agencies, the
added importance and the great variety of our tax laws, the
regulation of the sale of securities, foods, drugs, insurance, and
many other of the important items of our daily life—these and
numerous other regulatory or administrative measures have
created a demand for a new kind of legal service, which is
equal to or greater than the demand of the courts. Their
effect upon legal institutions and the practice of the law has
been profound and far-reaching.

Until fifty years ago, or even later, the practice of the law
was principally a matter of appearing for the plaintiff or the
defendant in the settlement of neighborhood disputes. The
lawyer lived on local controversies, the disagreements of neigh-

bors, and family disputes. His success as a practitioner de-
pended in small measure only upon his knowledge of the law.
His success depended more on his personality, his wit, and his
forensic skill. The lawyer's business in those days consisted
almost wholly of the trial of law suits. He attended the terms
of court in his own county, and if he was a lawyer of prominence,
in adjoining counties of his circuit, and between terms he
worked on his farm or ran a store. He made scanty prepara-
tion for the trial of his cases, oftentimes being employed only
a few days or a few hours before his case was called. He ap-
p lied the few fundamental legal precepts which he knew, to the
facts at hand, and relied to a large extent on his skill in argu-
ment, or on some unfortunate slip of his adversary to win his
case. The arguments were usually more than mere legal rea-
soning they were orations replete with logic, containing, how-
ever, but little citation of law. They were adorned with rhet-
oric and generously interspersed with quotations from the
classics. Even so great and successful a lawyer as Lincoln had
but few cases during his entire professional career which would
not come within the class just described. He rode the old
Eighth Circuit in Illinois on horseback, following the court from
county to county. In the smaller counties, it frequently re-
quired but a few days to try all the cases on the docket.

The lawyer of that period had no knowledge of business—
none was required—and usually his knowledge of the law was
confined to the limited precepts governing the neighborhood
dispute. Too commonly he had selected and entered the pro-
fession, not because of any superior educational or moral train-
ing, but because he had early manifested a certain ability in
argument, and had a ready wit. If a boy was glib, argumenta-
tive, cunning, and showed an early aversion to manual labor, he
was considered a proper candidate for the law. If his parents
decided to put him into the law, there was no great obstacle
to prevent it. He was given a few books, usually including Blackstone's Commentaries, and after a little reading at night when his other work was done, he was taken into a lawyer's office and his professional career was considered started. If he acquired some knowledge of the law's fundamentals, and more particularly if he developed an ability to outwit his adversary and take good care of himself on his feet, he became a successful practitioner. Law suits were looked upon as a duel of wits, a game to be played sharply and savagely. The ability to work on the prejudice of the jury and to outwit his adversary was the badge of greatness. The idea that a lawyer might avert trouble and dissension, or that he might make human affairs run more smoothly and prosperously, or that he might be a creative and a constructive factor in the business life of his community was almost unthought of. Of course, the picture I have just attempted to give you must of necessity deal with generalizations, which are often dangerous, and in this instance may no doubt be refuted by the lives and careers of noted lawyers of those times which may occur to you. However, to many of the older members of the bar today, the picture must be familiar as a fading recollection of their early professional days, and to all of us it must be recognizable by the influence it has left on the profession even up to the present period.

That type of lawyer has passed, except in the most rural districts, and with him has passed the horse-trade and line-fence law suits. The profession has been caught in the onward march of trade and commerce, and although there are some who regard this as almost a calamity and who long for a return of the days of "Tutt and Mr. Tutt", yet I consider it to the everlasting credit of the lawyer that, when he was caught in the march of progress, he did not stumble and fall, and thus retard the march, but quickly caught the step of the other marchers, and is now in the full swing of the parade.

Antiquated legal doctrines and methods, inherited from the period when this country was young and principally rural, cannot survive the onward march of progress. Drastic changes have been necessary in order to furnish more speedy justice for a busy and industrial people. When the courts and the old methods have failed, as they frequently have, to afford the proper relief, the parties themselves have set up their own tribunals and their own procedure. Thus we can account for the growth of arbitration tribunals with their simplified rules for ascertaining facts, workmen's compensation boards, minimum wage commissions, public service commissions, tax commissions, securities commissions and many other extra-judicial bodies, made up principally of laymen and administering jus-
tice without observance of court methods or technical court procedure.

A similar development of an entirely new kind of administrative laws for the public welfare is appearing in the shape of city-planning and zoning laws, laws regulating prices, laws regulating and licensing various businesses and occupations, housing laws, and many other laws which are administered not by the courts but by laymen. The effect of this general situation on the law and on the lawyer is far-reaching.

The trial of law suits is no longer the chief ambition nor the chief avocation of the average lawyer, but when he does go into court, he finds the practice changed. He finds his case enveloped in a great mass of detail, which has been worked out by an assistant. He finds that instead of taking a few hours to bring his case to issue and try it, it takes several months to bring it to issue, and several days, sometimes weeks, to try it.

He has also learned that his client prefers to use his services as a preventive to keep the client out of trouble rather than as a restorative to pull him out when he has been allowed to get in. He has learned that the constructive practice of the law is much more satisfactory both to himself and his client than is the destructive kind. He is witnessing now the beginning of a more complete system of preventive law. "Why", he is asked, "should a party to a doubtful contract, or one who believes himself harassed by an unconstitutional statute, or who is involved in any other doubtful situation, be compelled to choose his course at the risk of great financial loss, or even personal liberty, when the decision of a court in advance would settle the matter" Some states are now providing by statute for the submission of purely legal questions to the Court in advance of action. Preventive law may, in the logical advance of the science of jurisprudence, soon take its place along with preventive medicine and hygiene.

It is no longer sufficient for a lawyer to be merely versed in the law; he must know and be able to understand and discuss intelligently the business problems of each of his clients. He must know about transportation, selling, financing, and manufacturing, and above all he must know how to analyze a balance sheet. He is constantly at the right hand of every successful manager of business, be that business big or little; and from the ranks of the legal profession are often recruited the great captains of finance and industry. He has thus become a creative and constructive administrator, not merely a litigator living on the disputes of others, and he has a right to feel that he is rendering a better and more useful service to humanity.
The administration of justice will ever be the chief function of government, and the most essential element of human progress, and the lawyer will ever be the human agency through whom justice is administered. That duty and responsibility can be discharged only by a bar which is intellectually capable and which is inspired by a spirit of public service rather than private gain.

II

THE LAW IS NOT A JEALOUS MISTRESS

By EUGENE H. ANGERT

I am sure that there lingers in the memories of each of you, as it does in mine, the recollection of that day,—twenty, thirty, perhaps even forty years ago,—which marked your entrance into the profession of the law. It may have been in the tradition-soaked halls of Harvard or Columbia—it may have been in one of our great State Universities; perhaps it was in some humble night school. Wherever it was, on the day we began the study of law we listened to a welcoming address by the Dean of the Law School or by a prominent member of the bar drafted for the occasion, and it was then we heard, for the first time, that the law is a jealous mistress. A few years slipped by and we were about to embark upon the great adventure. When we received our degrees, the learned jurist who delivered the address to the graduates dwelt upon the exacting labors that awaited us, and, once again, we heard that the law is a jealous mistress. We passed from the law school into the practical school of law. At the bar, we went through the period of starving infancy, through the half-satisfied hunger of adolescence, and into the long awaited days of fully nurtured maturity. During all these years, at every bar association meeting and on any other occasion that the profession were gathered together, we listened to some Nestor of the bar hold forth on the obligations of our profession, and the burden of his song and the moral of his story was that the law is a jealous mistress.

If we could but lay the flattering unction to our souls that we have only been listeners; but I fear that some of us, at least, have been zealous disseminators of this heresy with a reckless indifference to its blighting effect upon the aspirations of those to whom we preached it. I fancy that the lives of numberless lawyers of our day and generation, and of days gone by, have been narrowed by an unquestioning adherence to that aphorism. Their days have been filled with vain regret and their years darkened by stillborn hopes and suppressed desires. They
longed to mount some hobby and ride through green fields and
woody lanes, made musical with the song of birds and sweet
with the perfume of flowers. They were eager to enter into the
House of Mirth and linger there with "sport that wrinkled care
derides and laughter holding both his sides." They would woo
the fickle goddess of fame in the House of Literature or in the
Temple of Art. They hungered after the fleshpots of politics
and hopes "the ear of listening senates to command."

But they put behind them these temptations; they were faith-
ful to the law because it had become a part of their faith that
their mistress was a jealous mistress. For that aphorism, so
pontifically pronounced, so persistently promulgated, is some-
thing more than a statement of fact. It carries with it a threat
and a warning—a warning against any sly visitation outside of
the house of the mistress, any entangling alliance in a different
domicile, and platon friendship, no matter how innocent. It
conveys the threat of her displeasure if that jealousy is aroused,
and the denial of her favors from the day of the transgression.
If the law is a jealous mistress, then it must follow as the
night the day that safety lies only in unwavering devotion, for
did not Solomon—the wisest of all men—tell us that "jealousy
is cruel as the grave"?

At the risk of facing a charge of heresy and with a full reali-
zation of the danger in undermining a cardinal principle in the
lives of the legal fraternity, I nevertheless maintain that the
law is not a jealous mistress. I realize that a proposition so
long recognized can not be overthrown by reason and argument
—I would not be so bold as to make the attempt before this dis-
tinguished body of lawyers. I must produce authorities for
every premise and fortify every conclusion by more authorities.
In these days, when every decision of any court is canonized at
birth, I hold no hope that reasoning the most cogent, or logic
unassailable, could win a favorable judgment on any legal prop-
osition against the rumor of a threatened decision by a Justice
of the Peace in a township of Arkansas or the prospect of an
unreported opinion by a Notary Public in the Hawaiian Islands.
The heresy which I am here to combat has flourished since the
days of Coke on Littleton—who am I that dare gainsay it unless
I can pile up authorities until they reach to the heavens and
form a Jacob's ladder on which the angel of truth may climb
down?

And so with a full appreciation that the burden of proof rests
upon me, I came laden with cases in point. My first authority is
Chief Justice Marshall. In the history of American jurispru-
dence, he stands supreme—no man has left so deep an impres-
sion upon his country's laws and its institutions. For thirty-
four years he adorned the highest place in the Temple of Justice; he presided over the greatest court that civilization has ever constituted. No lawyer can hope to equal the fame that has been his since he passed away, and that will endure so long as the nation survives under the Constitution that he made into a living thing.

If the law is a jealous mistress, then Marshall strongly provoked that "green-eyed monster which doth mock the meat it feeds on." During his first five years on the Supreme Court, he spent most of his days and his nights with a rival. He dwelt not in the Halls of Justice, but in the House of Literature. You will recall that Bushroyd Washington, the nephew and heir of the Father of his Country, was Marshall's colleague on the Supreme Court. He had in his possession the great mass of letters and papers that Washington left. He tempted Marshall to write the life of Washington, and the Chief Justice yielded to the temptation. It was no labor of love—the hope of gain prompted the undertaking. Marshall was in pressing need of money to pay the balance of $31,500 on the Fairfax lands which he and his brother had purchased, and, after almost two years' bargaining with the publisher, he counted on at least $50,000 from his adventure in the field of letters. It was a monumental labor and required exhaustive toil. There were, in Marshall's words, "immense researches among volumes of manuscripts and chests of letters and gazettes." Three years after Marshall had undertaken his sojourn in the House of Literature, he finally produced the first volume. Prodded constantly by the publisher, who, in turn, was prodded by the dissatisfied subscribers, the laborious work went on and on until finally, in 1807, the last of the five ponderous volumes was finished. For five years the great Chief Justice gave the greater part of his time, much of his thought, most of his worry and toil, to biography, not to law. He must have realized that he was committing an indiscretion, because for a long time he tried to conceal the fact that he was to be the author and when the first volume was about to be issued, he strenuously objected to his name appearing on the title page. But no man will maintain that Marshall's entangling alliance with literature cost him anything of the favor or the flattery of the mistress of the law. If the law were a jealous mistress, would she have placed the wreath of immortal fame upon the brow of the great Chief Justice, who for so long neglected her to labor and toil in the House of Literature?

My next authority is Mr. Justice Story. Equalling Marshall in length of service upon the Supreme Court and shining by a light that even the great Chief Justice could not dim, the name
of Story is written high on the scroll of fame of the American bar. As a professor of law at Harvard, as an author of great legal treatises, as one of the greatest judges of the Supreme Court, the record of his varied accomplishment in the legal profession has never been equalled.

Did Story give the mistress of the law an unwavering devotion? He did not. He paid most ardent attention to the Poetic Muse. In his early days, he wrote much poetry, and while at the bar he published a volume of poetry entitled, "The Power of Solitude." When Story was on the Supreme Court, this volume was so much sought after as a literary rarity that a copy at the Harvard Library was chained to the shelf. I fear we have fallen into more prosaic days—or perhaps bibliomaniacs of our time are immune to kleptomaniac—for Story's "Power of Solitude" now reposes in the Harvard Law Library unchained, untouched and unread. Story's pursuit of the muse met with no favorable response and he ceased his attentions. But later in life he regretted that he had deserted her. In his autobiography he refers to his early attachment: "I dropped poetry except as an occasional amusement of a leisure hour. I departed from its fairy realm with the humble belief that I was not destined to live even at the outskirts of its enchanted scenery. Yet I cannot say that, even at this distance of time,

'The dreams of Pindus and the Aonian maid
Enchant no more.'"

There is a note of wistful longing for the forbidden in those words—a longing that throughout his life was not wholly denied. All during his years on the bench, Mr. Justice Story flirted with the muse. You will find in his biography many specimens of his poetry, and even while he was sitting on the bench he wrote verses in comment and criticism of the arguments that were being made before him. If the law were a jealous mistress, surely Mr. Justice Story would have aroused that selfish instinct and felt the visitation of her displeasure.

I turn for my next authority from the bench to the bar. In wandering through the Hall of Fame of American Lawyers, I am impressed by the many places that are given to the lawyers of the first fifty years of this nation and the few to those who came since the Civil War. It may be that there were giants in those days. It may be that the giants of our day are lost in the crowds of big men who so nearly approach them in stature. Or perhaps it is that the practice of law under modern business conditions, amid the grind of commercial conflict, gives small opportunity for reputation for the living or remem-
brance for the dead. Whatever the reason, what a wealth of
great lawyers the first half of the last century affords! Patrick
Henry, usually thought of only as a great orator, but so able a
lawyer that Washington offered him the position of Chief Jus-
tice of the Supreme Court; Jeremiah Mason, the most profound
lawyer that has ever come out of New England; Alexander
Hamilton, for many years leader of the New York Bar; William
Wirt, Harrison Gray Otis, Daniel Webster, Rufus Choate, the
Supreme American advocate of all time.

But by universal acknowledgment of his rivals at the bar, and
by the tribute of the great judges before whom he shone, Wil-
liam Pinckney ranked first among the lawyers of his time. For
twenty years he reigned as monarch over all, the undisputed
leader of the bar until his death. "Mr. Pinckney," Chief Justice
Marshall said, "was the greatest man I have ever seen in a
court of justice." And thirty years after his death, Chief Jus-
tice Taney said of him: "I have heard almost all the great ad-
vocates of the United States, both of the past and the present
generation, but I have not seen an equal to him."

In almost every case of importance that came before the Su-
preme Court in his time, William Pinckney was engaged—Gib-
bons vs. Ogden, McCullough vs. Maryland, Cohen vs. Virginia—
and although there were associated with or opposed to him in
those memorable contests the greatest lawyers of the day, Pinck-
ney surpassed them all in splendor of eloquence and strength of
argument. Of the forty-six cases reported in the eighth volume
of Cranch Pinckney was counsel in twenty-three—a distinction
no other lawyer has ever attained. Justice Story, in illustrating
his preeminence at the bar, wrote that Pinckney earned $21,000
in one year (a tremendous legal income for those days) and
four times what Marshall earned as leader of the Richmond
Bar, although I sadly note that it is about one-tenth of the
yearly income of a leading damage suit lawyer in my city.

I fancy that Pinckney's affectations and mannerisms would
have been fatal to his success in our day, but they were over-
looked because of his tremendous abilities. He was an exqui-
site dandy; he wore a fresh pair of white gloves each day
in the Supreme Court, which he carefully removed when he
began his argument. George Ticknor is authority for the state-
ment that he "wore corsets to diminish his bulk" and "used
cosmetics to smooth and soften his skin." His rhetoric was as
affected as his dress, but Marshal paid it a remarkable tribute
when, for the only time that he departed from his cold, concise,
logical style, he cast his opinion in the case of The Nereide in
the florid rhetoric which he absorbed from Pinckney's argument.
Now unlike Marshall's style the language of the opinion is, you will readily appreciate from this extract:

"With a pencil dipped in the most vivid colors, and guided by the hand of a master, a splendid portrait has been drawn, exhibiting this vessel and her freighter as forming a single figure, composed of the most discordant materials, of peace and war. So exquisite was the skill of the artist, so dazzling the garb in which the figure was presented, that it required the exercise of that cold investigating faculty which ought always to belong to those who sit on this bench, to discover its only imperfection; its want of resemblance.

"The Nereide has not the Centaur-like appearance which has been ascribed to her. She does not rove over the ocean, hurling the thunders of war while sheltered by the olive branch of peace. She is not composed in part of the neutral character of Mr. Pinto, and in part of the hostile character of her owner."

Pinckney particularly delighted in strewing flowers of rhetoric about him when ladies attended the arguments in the Supreme Court, as they often did, and on one occasion he had finished his argument and was taking his seat, when he noticed Mrs. Madison and a bevy of ladies entering, whereupon he began anew, using fewer arguments but scattering more flowers.

Did William Pinckney, acclaimed the undisputed head of the bar as no man has ever been acclaimed, acquire this supreme favor of his mistress by supreme faithfulness? No, he deserted her on many occasions and for long periods at a time, when she was most lavish in her proofs of affection.

When I think of his long and frequent desertions, I can almost hear him cry out in the words of the poet Dowson:

"But I was desolate and sick of an old passion
Yes, I was desolate, and bowed by head
I have been faithful to thee, Cynara, in my fashion."

And what a fashion! At the end of his first ten years of practice, just when he had attained distinction at the bar of his native State of Maryland, he goes off to London as special commissioner to settle claims under the Jay treaty, and there he remains for eight years. Upon his return he is made Attorney General of Maryland, but two years' devotion to the jealous mis-
tress of the law brings his fidelity to the breaking point. Again
he abandons her for foreign climes, and, as a special commis-
sioner appointed by Jefferson, he spends five years in London.

His second reconciliation with the mistress of the law lasted
for five years—half of it as Attorney General of the United
States. Once more he yielded to temptation and for the next
two years we find him again in Europe as Minister to Russia
and special envoy to Naples. Like many men, when his “way
of life had fallen into the sere and yellow leaf,” he comes back
with an air of repentance, swearing eternal fidelity, and the
law took him to her bosom for the last five years of his life. But
even part of these she had to be content to share with a rival,
for during three of these years he was Senator of the United
States.

Protracted absence, habitual desertion, open and notorious
abandonment—to all these specifications William Pinckney must
plead guilty—and yet his mistress lavished upon him her
choicest gifts in his lifetime, and upon his death held up the
imperishable glory of his name and made him immortal.

My next authority is Luther Martin. When his mistress
would find him, she sought him in a tavern. He revelled in
the companionship of Bacchus and she had to content herself
with such brief and fleeting moments as he gave to her “drowsy,
with the mingled wine of laughter and learning, passion and
regret.” He was a mighty drinker—all his life the heaviest
drinker of that age of drinking men. But Luther Martin drunk
was a match for the best of lawyers sober. His knowledge of
the law was profound, and a wonderful memory enabled him
to have at an instant’s command all of his great and varied
learning. For thirty years Attorney General of Maryland, he
crowned his triumphs at the bar by representing his State, at
the age of seventy-five, in the historic case of McCullough vs.
Maryland, and despite his age and a half-century of excessive
drinking, his argument was not inferior to that of Webster or
Pinckney on the other side.

As counsel for Justice Chase, he was the dominating figure
in that historic impeachment trial—and the country owes to the
successful exercise of his great ability on that occasion a debt
far beyond the immediate result, for the impeachment of Chase
was to be but the prelude to the impeachment of Marshall. His
greatest triumph was the successful defense of Aaron Burr.
Into that cause of friendship he threw all the passion of his
tempestuous nature, and all the power and learning of his phe-
nomenal intellect. Throughout that long trial, a contest of the
giants of the bar, Martin drank even more than usual, but
never was he in more perfect command of his wonderful powers.
During the trial he struck up a friendship with Blenerhassett, who had been indicted with Burr, and who, as you know, gave William Wirt the opportunity for that burst of rhetorical description that has found its way into school books for a hundred years and is declaimed by school boys to the present day. In his diary Blenerhassett frequently mentions Martin's heavy drinking during the trial. "Martin was both yesterday and today more in his cups than usual. I recommended our brandy placing a pint tumbler before him. No ceremonies attended the libation."

The ingratitude of a child may be sharper than a serpent's tooth, but equally sharp to the lawyer is the ingratitude of a client. To two of Luther Martin's clients it was singularly given to display their gratitude and right nobly did they embrace the opportunity. On one occasion Martin was overbearing and insolent while drunk in the Federal Court at Baltimore. The District Judge drew up a citation for contempt and handed it to Justice Chase, who was sitting with him, to sign. But Chase threw down his pen with the remark that no matter what his obligations to the law or to the Court, he would never sign a commitment for Luther Martin.

And when Martin was broken in health and unable to practice, another grateful client, Aaron Burr, took him into his house and kept him there until his death.

If his dissipated habits of life did not lessen the splendor of his legal success, neither did they diminish the affection in which he was held by the people of his State. That affection was shown in a way unique and unparalleled in the history of the bar. When late in his life he became incapacitated, the Legislature of Maryland enacted a law which required every lawyer in the State to pay a yearly tax or license fee of five dollars towards a fund to be given to Luther Martin.

When on March 17, 1822, Pinckney fell in his might almost before the great Court where he loved to display his powers, Daniel Webster became the leader of the Bar. On that proud eminence he maintained his place for the whole remaining thirty years of his life. Vain, indeed, would it be for me, before this audience, to enlarge upon his triumphs in the great jury trials of his day, or in the most important cases in the Supreme Court of the United States. His entire professional career is convincing proof that the law is not a jealous mistress. His whole life, he gave to law and to politics a divided allegiance. Constant in his inconstancy, he loved them both with the full strength and ardor of his great soul. He could "be happy with neither, were t'other fair charmer away." Out of forty years he gave to the law alone but seven; during thirty-three of those
years, she had to be satisfied with such attention as he paid her when he was not engaged with her rival, as Congressman, Senator or Secretary of State. I was about to say that he maintained two establishments—but that statement would skirt the edge of truth. I should rather say that law and politics dwelt together in unbroken harmony in his house—dwelt there like the wives of a Mormon Elder, free from jealousy and without reproach.

The volumes of legal biography from the first published report up to the most recent advance sheet that has come from the press are full of authorities analogous to Webster. Some of them may not be so conclusive of my proposition—others are merely persuasive, but a long list of lawyers in politics it is, each contributing in varying measure additional proof of the fact that the law is not a jealous mistress.

If I assembled all of the lawyers since the beginning of American jurisprudence up to this hour, lawyers great, small and medium, from every State in the Union, who mixed the salad of their lives with the oil of law and the vinegar of politics, I would conjure up before your weary eyes a procession so interminable that it would take longer to pass a given point than the Chicago Gold Parade of 1896. No matter how firmly grounded in fidelity, or how impervious to other temptations, the siren of politics possesses such an impelling fascination for the members of the bar that many are unable to resist her.

Some listen to the siren song and are lured on to their destruction. Some, like the men of Ulysses, close their ears for fear that they may not be able to resist, and are saved. But many listen and stop, and having heard the sweet strains of the siren's song, they must gaze upon her fatal beauty. To a few it is given to abide with her for long, long years, but the greater number of those who worship at her feet, she casts out after a brief sojourn. How many of these have you and I not seen, full of vain regret, wending their weary way back to their first love! And all the while the mistress of the law sits at home waiting patiently, as Penelope waited for Ulysses, through the long and silent years. The wayward wanderer returns, and she welcomes him, perhaps not as rapturously as he would wish, but certainly with more ardor than his long absence gave him the right to expect. She may not kill the fatted calf, but she at least provides him with near beer and skittles. While he satisfies his hunger once more at his own table, she smiles upon him as if he had never left. She shows no symptoms of jealousy; she lets the dead past bury its dead, and turns to the future her eager expectant eyes.
From the many that crowd upon the memory, let me cite you without elaboration three recent outstanding authorities. There is Charles Evans Hughes, whom I characterized on another occasion as in diplomacy, like a planked shad, open and above board; in politics, like Cesar's wife, all things to all men; in international affairs, like the Venus de Milo, the leading figure in disarmament. He listened to the siren's song and lingered long and lovingly in her domain as Governor of New York and Secretary of State. A third time, with but a brief period of repentance, he was again lured by the sound of her voice until his bark was shattered upon the Californian rocks.

The second is Elihu Root, who reached the age of indiscretion and had attained that fullness of years at the law when fidelity becomes second nature. Then for three distinct periods of his life as Secretary of State, as Secretary of War, as United States Senator, he yielded to the call of the siren and banished from his affections the mistress of the law.

My third is John W. Davis, who wooed the siren of politics at the Court of St. James. When his purse was empty, he was forced to come back to his first love, and, with the warmth of her generous soul, she filed it to overflowing. He abided but a short time, and then permitted an unfortunate episode in Madison Square Garden to dim the brief memory of his repentance, and he listened to the siren's song as he drifted by on a plank that denounced in clear, emphatic and unequivocal terms—nobody knows what.

I am fearful of wearying you with more authorities, but I cannot resist calling your attention to two companion cases. They are William G. Evarts and Joseph H. Choate. There may be other instances where two partners each attained the leadership of the bar, but I have never heard of them. Here are two great lawyers, the recollection of whose outstanding distinction rests upon no hazy tradition, but is within the memory of many of us. Both found the law no jealous mistress. During the thirty years after the Civil War, the name of William G. Evarts, like Abou Ben Adhem's, led all the rest. He kept one President in that high office and another one out; for he successfully defended Andrew Jackson from impeachment and he obtained that partisan vote in the electoral commission that put Hayes into the White House over Tilden. Before the Geneva Commission it was largely his commanding abilities that gave to the United States the award in the Alabama Claims; and in the most sensational trial in this country during the last half century he successfully defended Henry Ward Beecher against Tilton and established his innocence of the charge of immorality.
No man, within the memory of the living, attained greater preeminence in the law than William G. Evarts; and yet twice he deserted the law for political life. Four years as Secretary of State in the cabinet of President Hayes, and, at a later period, six years in the Senate, is the record of his infidelity.

Choate's derelictions took an entirely different form, for if we pass over his indiscretion as Ambassador to England, which came so late in his professional life that we might well overlook it, during his entire career he turned to the Siren of Politics a deaf ear, or perhaps it was better said that she turned a deaf ear to him. But his whole life was filled with little lapses, and, lest you charge me with emphasizing trifles, let me remind you that "trifles light as are to the jealous confirmations strong as proofs of Holy Writ." He provoked the mistress of the law with the most persistent flirtation—a constant indulgence in after dinner speaking. I think you will agree that when the mistress of the law condones the flouting of her affections for that frivolous minx, she is forever estopped from complaining of any infidelity. For a quarter of a century, in those dear dead days beyond recall, when dinners were dinners and not merely occasions for the advertisement of various brands of mineral waters, Choate illumined almost every dinner in New York with the flashes of his wit and the play of his fancy.

Evarts and Choate, great lawyers both of them, but, more remarkable still, both the wittiest of men.

The pure gold minted in the imagination of Evarts is still current coin in the realm of humor. President Hayes, in what might be termed an anticipatory breach, refused to serve wine at White House functions. This moved Evarts, his Secretary of State, to remark that the President gave very successful dinners for "the water flowed like champagne." When visiting Mount Vernon someone remarked to him that Washington was a man of such prodigious strength that he threw a dollar across the Potomac. "Well, you know," said Mr. Evarts, "the dollar went much farther in those days."

To a friend he sent a copy of his eulogy on Chief Justice Chase, together with a box of hams from his farm, with the note that "they are both products of my pen." And when Henry Ward Beecher objected to a conference with him on Sunday during the progress of the Tilton-Beecher case, he silenced his objections by reminding him that our Lord has given his approval to lifting an ass out of a pit on Sunday—which was exactly what he was trying to do.

The well known reply of Choate to a friend who asked him who he would prefer to be if he were to live a second time—"Mrs. Choate's second husband"—will probably survive long after his
great legal arguments are forgotten. The marked features of Choate's post-pradial oratory was audicity—he took liberties and indulged in personalities, but his light and airy bandiage was so good humored and graceful in quality that it evoked nothing but hilarity, even from the victim. For instance, at a dinner to the Earl of Aberdeen, Governor of Canada, the guest of honor appeared in Kilts, the full dress of his native Scotland, and Choate opened his speech with the remark: “Sitting for the last four hours with the Governor General of Canada—the Gordon of the Gordons—I take great shame to myself that I did not leave off my trousers before I came here.” And, in the same spirit of audacity was his speech to the Sons of St. Patrick at the time that Home Rule was being violently agitated—he proposed that with their wives and their children's children, and with the spoils taken from America in their hands, they turn their faces homewards and land in Ireland and themselves strike the blow for Home Rule. And then he painted a pathetically hopeless picture of the predicament New York would find herself in when all the Irish had departed, and for the first time she was forced to govern herself. I think most of us have a sufficient understanding of the New Englanders' veneration for the Pilgrims to appreciate the wit of Choate when he pictured the Pilgrim Mothers as more devoted martyrs than the Pilgrim Fathers, because they had not only to bear the same hardships, but they had to bear with the Pilgrim Fathers as well.

American after dinner speakers depend largely upon humorous satires, more or less aptly applied, for their humor—but Choate's witticisms were always his own. He was a fountain of wit, not a conduit. But there was one witicism, borrowed from Evarts, that Choate delighted to pass on to his English audiences—he could well understand how Washington threw a dollar to the other bank of the Potomac when he recalled that he had thrown an English sovereign across the Atlantic.

He might have borrowed from his relative, Rufus Choate, a great lawyer with infinite humor, another witty reply. When a friend asked him if he was not afraid that his constant labors would undermine his constitution, Choate answered: “My constitution was destroyed long ago, I am now living under my by-laws.”

Evarts and Choate had a partner for a great portion of their professional career—the firm was Evarts, Southmayd & Choate. Charles F. Southmayd not only believed that the law was a jealous mistress, but he pursued that conviction with the fiery zeal of a crusader. More learned in the law than his partners, they gave public credit to his great knowledge for much of their pro-
fessional success. Choate's understanding victory was in inducting one of the judges of the United States Supreme Court to change his opinion and declare the first incomtax law unconstitutional. Southmayd had retired from practice ten years before, but he volunteered to prepare a brief against constitutionality of the law, which proved to be the argument on which the decision was rested. "I might almost say with entire truth," Choate has written, "that it was Southmayd who never went near the Court, who won the case". I find nothing in Southmayd's life to negative that the law is not a jealous mistress, but I do find much should convince anyone how dreary is the lot of a lawyer who so regarded her. Shut in the narrow chamber of the law, he hardly knew, according to Choate, what was going on outside of it. He led a solitary life, without friends or enjoyment of any kind. He never married. All his life he had no thought, no interest, outside of the law; and when his professional life was ended he presented a pathetic figure. At 60 he retired from practice, because he was afraid that if he continued he might make some mistake,—a danger which, if generally felt and simply acted upon, would probably result in the retirement en masse of the entire American bar. I fancy his whole-hearted devotion to the mistress of law was due as much to fear of her as to real affection. In his later years, he remained in constant terror of the law. The ever increasing list of misdemeanors disturbed him, and he employed counsel to watch for such statutes introduced before the Legislature—"man-traps", as he called them—lest he might commit some offense in his ignorance of the law.

He refused to ride on an elevated train until the Court of Appeals should decide that the owners were obliged to pay damages to abutting property owners. While he owned a carriage and team, he would never use it but took refuge in cabs, because under the common law rule of respondeat superior, if he had an accident the liability would fall not on him but on the cab owner. If the joy of living was denied him and fame passed him by, it was because he was convinced that the law was a jealous mistress, and I rescue his name from oblivion for this brief moment to serve as an argument against the very conviction that dominated his life.

With that forbidding picture of one whose life was a long denial of the proposition for which I contend, I rest my case. Upon the authority of the lives of Marshall and Story and of the lives of many of our greatest lawyers, I have established that the law is not a jealous mistress. In the mistress of the law we do not embrace a tenancy at will, with a covenant for quiet enjoyment, conditioned upon uninterrupted use and occupancy.
Rather are we seized with an estate for life, with a remainder over to every form of enjoyment that life can provide.

Confident that I have established my case, it only remains to settle the form of the judgment. This will engage your attention for but a moment more, for the decree must have shaped itself in your minds during the course of my argument.

How shall we use this newly realized freedom and what are to be our relations to the mistress of the law when the dread of her jealousy no longer forces from us a reluctant constancy?

Let me preface my answer with the statement that my answer is addressed to you who have achieved success at the bar and whose lives are weighed down with the labors that your success exacts. I do not for a moment conceive that the members of our profession are spurred to excessive work by the desire of greater financial reward. They know that money is not an end and need is only an incentive. Nor do I believe that the hope of fame is an impelling motive in their lives. If it were, they would but have to dig down in the musty volumes of the forgotten past for some even slight record of those who achieved fame in their day to appreciate that the fame of the lawyer is buried when the grave closes over him—like Tennyson's snowflake—"One moment bright then gone forever." I do believe that the American Lawyer, like the American business man, makes the sole purpose of his life, because he has adopted the false standard that life is only for work. Years ago that great philosopher, Herbert Spencer, speaking to an American Audience, said:

"We may trace everywhere in human affairs a tendency to transform the means into an end. All see that the miser does this when making the accumulation of money his sole satisfaction; he forgets that money is of value only to purchase satisfaction. But it is less commonly seen that the like is true of the work by which the money is accumulated—that industry too, bodily or mental, is but a means and that it is as irrational to pursue it to the exclusion of that complete living it subserves as it is for the miser to accumulate money and make no use of it."

True as they were when spoken, those words are even more strikingly true today. We lawyers are prone to look upon leisure as the larceny of time that belongs to our clients. We have no time for the other enjoyments that modern life so abundantly provides because we are chained to the galleys of our profession. We sit at the banquet of life spread with the most varied food to tempt any taste and we partake of but one dish.

We must, of course, work to live, but must we live only to work? I fully recognize that in his work a man should, and
usually does, find his greatest source of contentment and satisfaction. But I dissent from the orthodox view which makes a religion of business. I believe that labor should be largely leavened with leisure. Heretical though it may seem, I advocate in less work and more leisure,—not leisure reserved for some distant day of retirement, but leisure distributed throughout our daily lives.

The enjoyment of life increases with the number of variety of our resources and interests, and the pursuit of required leisure. Each interest outside of our work takes us into a new world and adds another life to the one we devote to the law. It may be true that "he who lives a thousand lives a thousand deaths shall die"—but men are not so cowardly as to limit their enjoyments because some day they must end. Leisure does not mean idleness. It means opportunity to provide intellectual stimulus for the mind, and to permit the soul to feed on beauty, which it craves, in nature and art and music and literature.

The one great resource that every one of us can enjoy is nature. It is a beautiful estate that belongs to all of us and its value is fixed by what we bring to it. In nature, the unprepared see little—the uninterested less. But if we will go into the woods with some knowledge of trees, or flowers, or birds or animals, "the cares that infest the day will fold their tents, like the Arabs, and silently steal away," and we will come out richer and better men. So confident am I of the joys that await you in the intimate companionship of nature that if I succeed in persuading some, at least, of you to take a day off occasionally from the treadmill of your office and yield to the appeal of the woods, I am sure I will have wiped out the debt I owe you for having invited me here and listened so patiently.

We need leisure for travel, and travel with open eyes and a receptive mind is one of the great broadening influences of life. To travel in our own country is not enough—for that brings with it only change of climate. When we go to Europe we meet changes of manners and customs and ideas. If we expose the film of our minds to new scenes and influences, we will have in the storehouse of our memories, riches that all through the years can be drawn on for pleasure and profit.

I think it was Rufus Choate who said that a lawyer's vacation is the time that elapses between the question asked a witness and his answer. It should not be so. We should take longer and more frequent vacations—not periods of ignoble ease—but time taken from our labors to devote to the enjoyment of the store of intellectual riches outside of our own immediate vision, to close contact with our families, especially our children, and to the cultivation of the many interesting forms of amusement.
That invite us. None of us doubt that the English bar is the equal of our own in learning, in industry, in devotion to our high calling, and yet the English barrister enjoys three vacations during the year, besides the long vacation in Summer.

I am but repeating a trite remark when I say that every man should have a hobby and the remark is peculiarly true of the lawyer, because his days are given over to intense mental application. A hobby sitting outside of our office is a constant reminder that other interests beckon us. A hobby provides a haven of refuge against the dreariness of old age. The hobby may be the collection of butterflies, the investigation of psychic phenomena or the development of some mechanical device. The important thing is not what it is but that it is a hobby and as such pursued. Every man has in his system the seed of some hobby that can be warmed into a long life of fragrant bloom.

If I may be pardoned a personal note—there is one sentence in Scripture which I try to keep always in mind. "In the midst of life we are in death,"—not for the conclusion that some draw from it, but to remind me that all I hope to get out of the journey of life, I must get as I travel along and not defer to some far off milestone that I may never reach. I want to see so much more of the beautiful spots of the world, so many more of its fascinating places and peoples, and of the historic and artistic creations of the past, before my candle is snuffed out. There seems no limit to the many books I want to read, no end to the interesting things I want to do and the time is so short. And since in the midst of life we are in death I try to so regulate my life that within the limitations of my obligations to others I may enjoy some of these things as I go along and not postpone their enjoyment to an imaginary day of retirement that may never come, or if it does, will bring with it a dulled appetite or impair physique that will render their enjoyment impossible.

III

THE TRIUMVIRATE OF THE PROFESSION OF THE LAW
By PAUL V. MCNUTT

Mr. President, Ladies and Gentlemen:—

Recalling the admonition of the president not to be academic, I wish to speak to you briefly on "The Triumvirate of the Profession of the Law".

A few months ago I heard Learned Hand, Judge of the United States Circuit Court of Appeals, Second Circuit, say that "The teaching of lawyers is indeed as distinct a vocation from the practice of law as law is from engineering or science".

The acceptance of this as a fact is evidenced by the number of law teachers who are devoting themselves exclusively to their calling. This change was necessary and advantageous. It was necessary because the busy lawyer had no time for students and the teacher, if he performed his duty, had no time for clients. It was advantageous in that it developed the science of teaching law and pointed the way toward a systematic, scholarly understanding of the law.

But the evolution of law teaching as a distinct vocation does not mean that the teacher is divorced from the bench and bar. Practically all law teachers have practised law and many of them have held judicial positions. By entering academic circles—which, though poverty stricken, are not as cloistered as you might think—they have chosen a different function in the solution of the same problems they faced as practitioners. They labor in the same vineyard. They are still members of the public profession of the law and share its responsibilities.

It is for this reason that I have chosen to refer to the practitioner, judge and law teacher as the triumvirate, using that term in the sense of a coalition or association of three in office or authority. I might have used the term as meaning the modern counterpart of the First Triumvirate, Pompey, Julius Caesar and Crassus, but I was unable to find a group in the legal profession to fit the role of Crassus, whose place in the First Triumvirate was secured by his great wealth. It is my purpose to emphasize the fact that the legal triumvirate, a coalition of three in authority, is charged with the most important responsibility in politically organized society, which is the efficient administration of justice. The successful discharge of this responsibility involves and demands the highest degree of cooperation and intelligent effort.

The authority of this group is challenged by certain lay agencies. On the face of the matter such a situation is neither unusual nor alarming. The lay attitude towards the lawyer is traditional. There is a bit of mediaeval verse which illustrates the tradition:

"Sanctus Ivo erat Brito
Advocatus sed non latro
Res miranda populo",

which is translated thus—Saint Ivo was a Brittainy lawyer but not a robber—a wonder to the people!

It was this same Saint Ivo, so the ancient story goes, who, on petition by the lawyers, was permitted by the Pope to choose the patron saint of the lawyers. The choice was to be exercised in this fashion. Ivo was to be blindfolded and turned loose in
the Lateran to feel the statues of the saints. He was to embrace one statue and the saint whose statue was thus selected was to be the patron saint of the lawyers. Ivo wandered about, lawyer-like, feeling of various statues, until he came to the one of Saint Michael overcoming Satan. Then, as fate would have it, he threw his arms about the statue of Satan, who according to the clergy, thus became our patron saint.

This traditional attitude dates back to the twelfth century disputes between law and theology, disputes which have arisen from time to time since and just lately have shown signs of revival. The clergy did not relish the thought of handing over the practice of the law and the places of authority to non-clerical lawyers and, in jealous rage, poured maledictions upon the heads of our unfortunate brethren to the evident joy of a credulous populace.

The same opposition flared up at the time of the Reformation, when Catholic and Protestant joined hands, figuratively speaking against the legal profession. This opposition was carried to the new continent by our Puritan forefathers and the clergy reigned supreme in Colonial America.

It is significant that the rise of the legal profession and the beginning of our national existence were coincident. This is a sesquicentennial in a double sense for American lawyers. But the closing of a calendar period is not so much an occasion for celebration as for casting accounts. Members of the legal profession have enjoyed a century and a half of leadership, marked by many outstanding accomplishments. Is this position of leadership secure or is it to be snatched from us by the members of other professions who would sit in high places?

The extreme hostility of the clergy did not disappear until after the Civil War, when it gave way to the pressure of economic conditions. We had come to think of the separation of the church and state as complete until certain happenings in Tennessee clearly indicated that the ties that bind had not been severed. Evolution and prohibition have renewed many of the age-old controversies over law and morals and have awakened desires for temporal leadership in many members of the clergy. We may expect some revamped diatribes of Luther from various pulpits. May we have the grace to accept them in a spirit of Christian charity and to go about our business unroused and undisturbed, ever remembering that it is possible to be (as Ivo was) both saint and lawyer!

Other learned professions are making demands for leadership. The doctor, the engineer, the scientist and the journalist strive for a place in the sun and, naturally enough, do not hesitate to revive lay tradition in order to remove the lawyer from
his place of authority. Within a comparatively short time the medical profession developed powerful and comprehensive state and national organizations, reorganized, raised and fixed the standards of medical education and admission to practice, made possible the publication of a first rate technical journal, and sponsored and secured adequate support for extensive research. All this was done in the interest of public health. The mortality tables reflect amazingly beneficial results. If the legal profession is to maintain and justify its place of leadership it must do the same thing for public security.

The engineer and the scientist point to remarkable accomplishments during the present generation as a basis for their claims. The journalist feels himself to be the voice of the public and thus the dominant figure in a democracy. Occasionally he has gone so far as to invade the legal field by what has been called "Trial by Newspaper" and by repeated attacks on the legal profession for alleged failures in the administration of justice.

The challenge by other professions, the repetitions of the slings and arrows of lay tradition and other manifestations of professional jealousy are not matters of grave concern so long as the practice of the law remains a profession as distinguished from a trade or business. Jessup defines a profession as being "a calling in life based on special training and ability contemplating public service, and differentiated from ordinary business vocation by its subordination of pecuniary returns to efficient service". The emphasis is on service. For the lawyer this means service in the proper administration of justice. Compared with other professions the lawyer's position in a complex society such as ours is secure because of the inexorable working of certain social and economic forces, which require the operation of legal science in the interest of public security.

The serious threat against the authority of the legal profession comes from a Frankenstein of our own creating, the ordinary reasonable man, who now appears in the guise of the ordinary business man or worker. He is hailed as the great apostle of common sense, the application of which is suposed to cure all ills of the body politic. He has been taught by the demagogue, by the editor and by the school teacher that his will, if, as and when expressed by the legislature, is law. (It is law, when and as interpreted by the courts in the light of reason and juristic science.) His opinion is public opinion. He is the public and it is for him that we have administration of justice. After all he is the judge of its efficiency because he accepts the remedy or the penalty and pays the bill.

In this connection I invite your attention to the preamble of the Canons of Ethics of the American Bar Association. In
America, where the stability of courts and of all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of the republic, to a great extent, depends upon our maintenance of justice pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men”.

I speak with careful sincerity when I say that legal profession does not receive the approval of the ordinary man. He is not satisfied with present day administration of justice and does not hesitate to say so. Many of our profession have received his mutterings in complacent silence or have lectured him on “respect for law” or on “the Constitution”.

The ordinary man, who is not a criminal, has respect for law, using that term in the sense of justice or the legal order. He loves it. It is his life. But he is disgusted with “sacred” rules and principles which are antiquated and do not secure the justice which he desires. He respects the work rather than the content of legal rules and principles. He respects the constitution when it proves to be the guarantee of life, liberty and property, and when it actually promotes the general welfare.

He knows what a man like Henry Brougham means when he uses these words in the House of Commons: “It was the boast of Augustus that he found Rome of brick and left it of marble. How much nobler will be the sovereign's boast when he shall have to say that he found law dear and left it cheap; found it a sealed book and left it a living letter; found it the patrimony of the rich, left it the inheritance of the poor; found it a two-edged sword of craft and oppression, left it the staff of honesty and the shield of innocence!” That speech, delivered in 1828, resulted in the appointment of the Royal Commission, whose reports brought about the Common Law Procedure Acts and the Judicature Acts. Both of these acts improved the functioning of law.

The ordinary man looks to the legal profession to secure a workable system of justice for him. When the profession fails to do this, he rises in his might to apply his so called common sense and tinker with the machinery.

I was forcibly reminded of this a few days ago when, at the conclusion of a county bar association dinner, the conversation turned to a discussion of administrative boards and commissions. One of the lawyers present remarked that he had about given up the practice of the law and was spending his time at the
State House making the rounds of boards and commissions. Then
the tirade began. I had the temerity to suggest that the most
of these boards and commissions were the result of lay efforts
to meet needs unsatisfied by our administration of justice but
this did not stem the attack. That conversation and a subse-
quent investigation revealed some startling facts. There are at
least eighty-six agencies of administration in our state (as dis-
tinguished from municipal government. Nine of these are
elected by the people. Five are non-governmental in character.
Sixty seven are distinct administrative agencies in board form
or governed by boards. Seven are distinct administrative ag-
encies with a single individual head. Only three are traditional
legal agencies: the Supreme Court, the Appellate Court and the
Attorney General. Sixteen others perform legal or quasi-legal
functions. (I abhor the word quasi. It is what E. H. Warren
calls a weak-minded word. It is best illustrated by the story
of the landlady who advertised a "room with a quasi-private
bath", which meant that it was not private at all.)

I risk boring you with these statistics to bring our four points:
First, that the actual administration of justice has been passing
from the courts to administrative boards and commissions;
second, that this is a lay threat against legal authority; third,
that the legal profession must formulate in legal principles the
results of administrative experience in order to prevent our gov-
ernment from becoming a government of men and not of laws;
and fourth, that the legal profession must make a critical ex-
amination of judicial organization and administration with a
view to adapting them to the changing needs of society.

We hear much complaint of the number of laws on the statute
books, of what some have facetiously call the "rain" of law. The 1926 Burns Revised Statutes contain 14,611 sections. Last
week Congress looked upon its handiwork in the form of 1700
double column pages of federal statutes. The ordinary man
blames the legal profession for this overwhelming mass of stat-
ute law on the theory that our legislative bodies are and have
been filled with lawyers. The fact is that the relative number
of lawyers in legislative bodies is becoming smaller. This is
another lay gesture against the authority of lawyers. Further-
more laymen are the ones who are loading the statute books.
Every trade, business, farm and labor organization and every
organization which has no business has some legislative project
and sooner or later obtains its adoption. Through the pressure
of certain of these organizations we have seen legislation be-
come the handmaiden of intolerance and bigotry, which have
absolutely no place in a nation "conceived in liberty and dedi-
cated to the proposition that all men are created free and equal."
The suggestions of laymen for getting rid of unfortunate legislation of lay origin would be amusing if they were not fraught with tragic consequences. For example, a distinguished layman, Arthur Twining Hadley, President Emeritus of Yale University, in his recent article on "Law Making and Law Enforcement" points out the great dangers which now confront us in the increasing demand for ill considered legislation and the increasing readiness of would-be reformers to rely on authority rather than on public sentiment for securing their ends. He asks this question "what can we do to protect ourselves against this spirit of overregulation which seeks to place under official control not only the organization of industry and commerce but the conduct and even the thought of the people themselves?" He answers this by saying that "If any considerable number of citizens, who are habitually law abiding, think that some statute is bad enough in itself or dangerous enough in its indirect efforts to make it worth while to block its enforcement, they can do so." He says that "this process of blocking law by disobedience is known as nullification" and he gives as illustrations the nullification of the Fugitive Slave Law by the people of the North, the nullification of the Reconstruction Acts by the people of the South, and the nullification of a large number of laws for the taxation of personal property by the people of today. (I suppose President Hadley knows that the actors in his last example are also guilty of perjury.) He goes on to say that "the people must choose between the danger of lawlessness which results from ignoring a statute and the danger of tyranny which is involved in passive obedience". Perhaps President Hadley feels that we should have a government of "best minds" instead of a government of laws. In practice every lawbreaker would feel that he belonged to the group of "best minds" and that he was performing a public service.

Legislation is necessary and becomes more important as our social and business life becomes more complex. It is essential that the law keep pace with the demands of present day civilization. The shift from rural to urban life, the automobile, the radio, the aeroplane and modern business present problems which cannot wait upon the necessarily slow development of the common law for solution. The situation calls for the best the legal profession has to offer. It calls for united effort in choking off useless, befogging legislation. It calls for careful study and preparation for law making. It calls for a close inspection of the economic, political and legal aspects of legislation, in the light of the experience of the past; and of the results desired.
It is equally important that we give due regard to the enforcement of a particular statute. Executive efficiency, custom or intrinsic worth may not be enough. It may be necessary to devise new methods and means of enforcement. The best legislation is worse than useless if it cannot be enforced.

The most vigorous challenge of present day administration of justice has to do with criminal law and procedure. Civic and professional organizations, newspapers and magazines, ministers and lecturers, three out of five of the individuals on the street seem to regard the securing of more efficient justice as the most important public question. The committee of the American Bar Association, appointed three years ago to investigate and report as to conditions affecting law enforcement, considered the data collected and made the brutally frank statement that we are the most lawless civilized people in the world.

There is no need to call upon the legal profession to bestir itself in response. It is doing that. Witness the activities of the American Bar Association, of various state and local bar associations, of the Association of American Law Schools, of the Institute of Criminal Law and Criminology and of the American Law Institute. What has come of this feverish activity? Hon. Herbert S. Hadley, chairman of the special committee of the American Law Institute, told me last week that his investigation had disclosed three facts: first, that the profession generally is uninformed on matters relating to criminal law; second, that among those who were informed there was no agreement as to the defects in the system; and third, that there was a lack of consensus of opinion as to the necessary work of reform. Some of the defects listed were abuse of the pardoning power and parole system, archaic and uncertain provisions of our criminal procedure, uncertainty and indefiniteness of our substantive criminal law, deficiencies in proceedings before examining magistrates, faults of police and court officials, unethical practices of defense lawyers, inadequate number and inefficient organization of courts, inability to secure the presence of witnesses, poor juries, the law's delay. Some of our brethren turned on the laymen, saying that public indifference to the enforcement of the law and flabby public opinion which tolerates lawlessness were the principal causes of the defective administration of justice.

The work of the legal profession in reforming criminal justice is hampered by the failure to give criminal law and procedure the careful study and treatment accorded different parts of the civil law and by the refusal of an increasing number of practitioners to accept criminal practice.

The legal profession must not and cannot avoid its responsibility for criminal justice. We have had enough lay tinkering
with criminal procedure to demonstrate the layman's inability to solve the problem. The problem can be solved and it is the lawyer's business to solve it after he has assembled the materials through thorough and painstaking research.

One other complaint the ordinary man makes of the administration of justice is expressed by this embarrassing question: why must he break a contract to find out what it means and why must he violate a statute to test its validity? It is no answer to whisper something about the possibility of a declaratory judgment. Some day he may find that civil law jurisdictions have a system of preventive justice. It would be wise to satisfy his crying need in this regard before he makes the request or devises a system for himself. Furthermore, an intelligent effort to obtain reasonable and just solutions of individual cases will humanize the administration of justice and make possible a more perfect achievement of the purposes of law.

Administrative tribunals, judicial organization and administration, legislation, enforcement, criminal justice, preventive justice and the individualization of the application of justice are some of the pressing problems of the legal triumvirate. They are more vital and far reaching in importance than the problems which faced the First Triumvirate of Rome. Upon their solution depends public safety. Upon their satisfactory solution by the legal profession depends the continuance of the legal triumvirate in office and authority. Unless the legal triumvirate is able to satisfy the ordinary man's demand for efficient, living justice it will be swept from power as were the triumvirates of Rome, as were our brethren in other days. One hundred fifty years of leadership is no guarantee of perpetual authority. A leadership which does not justify itself cannot long endure. Client caretaking is only one phase of a lawyer's duty. Public service of a high order is the distinguishing mark of the profession as long as it deserves that classification.

It would be well for us to cast aside professional jealousy and follow the example of the medical profession in certain activities which have brought it strength. One is the development of powerful and comprehensive national and state organizations. The American Bar Association has less than twenty per cent of the members of the profession on its rolls. Despite the remarkable and gratifying increase in membership this year, the Indiana State Bar Association includes less than fifty percent of the lawyers in this state. There is strength in numbers but there is greater strength in a public manifestation of unity of purpose.

Another necessary activity is to support and develop law schools of high grade. Conditions have forced the shift from
the apprentice type of legal education to the law school type. The transition is practically complete. The practitioner was entirely responsible for the first type and during the period of change retained control of legal education. When the law school type of legal education became firmly established the law teacher assumed control and the practitioner began to lose interest because he no longer felt the weight of responsibility. But the responsibilities of the profession as a whole remain. They are joint rather than several. The law student of today is the lawyer and judge of tomorrow. His training is of fundamental importance and through him all of us contribute to the strength of the profession. I am profoundly interested in creating the strongest possible ties between the law school and the bench and bar and I invite your hearty cooperation and support.

The law school of today is something more than a trade school. Training competent lawyers is its primary and most important task but it must also provide a place for productive legal scholarship and research. Law is a science and, like any other science, must have those who work in the field of pure science as well as those who work in the field of applied science. Pure science furnishes the materials for applied science and thus makes contributions of the greatest practical importance.

We must look to the law school for creative work in legal scholarship. The courts, with overflowing calendars, have no time for writing. The able practitioner cannot lay aside his clients' interests. The hackwriter is intent on quantity rather than quality production. Most of the work in the pure science of the law must be done in the law schools, where there is a guarantee of training and scientific attitude. But in all these matters the participation of the members of the active profession is necessary. Theirs is the important task of making productive legal scholarship possible through adequate support and of directing the work of research as well as making the practical application of the findings. The most important developments in modern medicine are the results of just such activities on the part of the members of that profession.

The third activity is to raise and fix the standards of admission to practice. This is essential for the protection of the general public in the urban society of today. This association has much to its credit in this regard and the recommendation of its legislative committee is a pledge of unrelenting efforts in the future.

I am confident that the legal triumvirate is equal to the problems and tasks which confront it. I solemnly pledge the entire resources of your state law school to the successful discharge of our joint responsibilities. Nothing is more important than
the efficient administration of justice. It is the foundation on which civilized society rests.

IV

ADDRESS

By William Draper Lewis

July 9, 1926.

The Fourth Annual Meeting of The American Law Institute was held in Washington, D. C. from April 29 to May 1, inclusive. Of the 722 members of the Institute 312 were present, and also 183 especially invited guests. The Company was a distinguished one. With few exceptions, they were men who count for something as judges, practitioners of law or law professors in their respective law schools. Sixty-six of those present were judges. Thirty-three of the highest courts of the forty-eight states were represented by one or more of their members, usually by the Chief Justice. Your own State Supreme Court was represented by Chief Justice Ewbank who took an active and helpful part in the discussion. Judges from each of the nine circuit courts of appeal were present. Furthermore from almost every state there were present lawyers recognized as among the leaders of the bar. From Indiana we had Charles M. Hepburn, Bloomington; Dean Paul V. McNutt, Bloomington; C. M. McCabe, Crawfordsville; Dean Thomas F. Konop, Notre Dame.

The object of the meeting was to consider and discuss section by section tentative drafts, submitted by the Council of the Institute, of the Restatements of portions of the Law of Agency, Contracts, Conflict of Laws and Torts. The meeting lasted three days and the attendance at the last day was almost equal to that at the opening session.

I think you will agree with me that a work which can bring men of the legal professional character and standing of the Members of the Institute year after year from all parts of the United States to Washington to spend several days over the discussion of a few statements of law is one which it is worth while for the profession generally to know something about.

The expression "Restatement of the Law" is not altogether a happy one. It was chosen because we are doing something more than merely setting forth the common law as found in the decisions of the courts: that would be to detail present conflicts and uncertainties, the very evils which the Restatement is designed to remedy. And yet, the expression—an orderly state-
ment of the common law—does carry to the mind more nearly than the expression—Restatement of the Law—the character of the work on which the Institute is engaged; though it is true that the limits of the common law are impossible to define in a single sentence, and not very easy to describe in many sentences.

The fact that the Restatement deals primarily with the common law is what makes it so difficult to give to the layman any conception of the nature and practical importance of the work on which we are engaged. It is, I think, a grave defect in the education of the average American boy or girl that they do not acquire the slightest conception of that most distinctive of all institutions of the English speaking people—the common law system of developing and expressing law. The average citizen understands the legislative system of making law, but 99 out of 100 think of the statute law as the only law there is. I suspect that we lawyers are primarily responsible for this almost universal ignorance of our common law system. Our legal ancestors generally refused to admit that judicial decisions, not to speak of legal treatises, made law. They repeated and repeated the assertion that the sole function of the judge is to express what law is, until they not only convinced the laymen, but to a very considerable extent, themselves, that the one way in which new law is made is by legislative action.

Untruths, and those particularly devilish things half truths, in the long run do harm. The ignorance of the nature of the common law system and the true function of the judge on the part of even educated laymen is, in a country having universal suffrage, a very real misfortune. It is, however, encouraging to note that at last lawyers are beginning to recognize the true nature of the common law system and the judicial function under that system. We see that the judge does not "make law" in the sense that the legislature makes it; that his true function is never that of changing law, but rather of adapting old principles to new conditions; but we also see that in this very adaption of the law to new conditions the law changes and grows until, with the passage of years, old fundamental principles are often profoundly altered.

It is only by recognizing these truths concerning the common law system of making and expressing law that we can grasp the real value of the system, which is the flexibility of its principles. By flexibility I mean that the common law, unlike the statute law, can mold itself into new forms to meet new conditions. Without shock, by an almost imperceptible process it follows the changes in the felt desires of the community concerning right and justice.
Yet every institution has the defects of its qualities. If the best quality of the common law is its flexibility, its chief defect is its uncertainty. If we examine the history of our law we find that the earliest recorded decisions were not very unlike those of the Arabian Cadi at the gate; a rough and ready justice in which the personal element entered not a little. Time and the peculiar genius of the English speaking people developed an orderly procedure from which grew an orderly expression of the substantive law. The justice of the King’s Court became more certain and under Nottingham, Hardwick and Eldon even the equity of the Court of Chancery was molded into a legal system. This system of law we in America inherited. But in this country in the last half century a number of causes have combined to increase, far beyond anything which has been experienced in England for several hundred years, the law’s uncertainty. Chief of these causes are (1) the rapidity of the changes in our social and economic conditions coupled with their increasing complexity; (2) the increase in the volume of legal business and the consequent multiplication of courts; (3) the existence, besides our Federal courts, of 48 separate state jurisdictions.

It is easier to work a common law system of expressing and developing law where the principles of law are enunciated with finality by a small group of judges sitting in a court of last resort, than where, as with us, there are at least 48 highest courts in as many jurisdictions each court being influenced, but not controlled, by the decisions of the others. Again, while in a multitude of counsel there may be strength, there is such a thing as too much counsel. Reported judicial decisions in this country now fill more than 225,000 printed pages each one of which has some degree of authority, though one often seeks in vain for a concise expression of the law applicable to the instant case in this wilderness of precedent.

While the causes to which I have referred are operating to make the law increasingly more unduly uncertain, the ever increasing complexity of business and other economic conditions is at the same time making it more and more necessary that the citizen can be informed with comparative certainty of the law affecting his activities and interests. Thus, the increasing undue uncertainty threatens to destroy our common law system unless an agency can be found to counteract and correct the evil. The clear recognition of this fact caused a group of some 34 judges and lawyers to meet together at the Association of the Bar of the City of New York on May 10, 1922. They were practically all men who had attained a national reputation. The object which all had in view was to ascertain whether it was possible to preserve our common law system of administering and developing law
by removing the confusion and uncertainty now surrounding so many topics. The group formed a voluntary committee and received from the Carnegie Corporation some $25,000 to make an examination of the causes of the existing undue uncertainty and complexity in the law and the possible ways to counteract these unfortunate tendencies. The work of the Committee and those called in to assist it resulted in a Report which caused the formation of The American Law Institute. This Report is entitled "Report of the Committee on the Establishment of a Permanent Organization for the Improvement of the law". It contains four main constructive ideas—

(1) That there should exist a permanent organization representative of the legal profession in the best sense of that word so organized as to enable it to act as a permanent agency through which the profession can carry on constructive work for the improvement of the law;

(2) That the most important constructive work which the American legal profession can now do is to give orderly expression to the common law with a view to its greater certainty and simplicity;

(3) That this orderly expression of the common law—or, as it is called, the "Restatement of the Law"—must be the product of intensive scientific research and analysis tested and corrected by varied practical experience;

(4) That the work must be so done that the profession will regard the final official Restatement of the Law of any subject as prima facie authoritative.

The first of these ideals has been fully realized. It is unnecessary for me to stress the fact that The American Law Institute does represent the legal profession in America in the best sense. The combination of official and life members has proved a happy one. The fact that the Members of the Supreme Court of the United States, the senior judges of the nine Circuit Courts of Appeal, the chief justice of the highest courts of the several States, the officers of the American Bar Association, the presidents of the state bar associations and the deans of the law schools belonging to the Association of American Law Schools are official members insures a proper representation of the judiciary, the principal law schools and bar associations at the annual meetings.

The building up of a life membership truly representative of the leaders of the bar in the different states is, of course, a task which from its very nature can never be completed but we have made, I submit, an excellent beginning. A great deal of time and care was expended over the persons to be invited to the organization meeting in February 1923. 70% of those in-
vited attended, and as a result became charter life members of the Institute. Life membership is limited to 700. At present there are 623 life members. It is essential that, as far as possible, each member shall have a distinct standing in his profession and also take an active interest in work of the Institute. Two factors tend to produce this result. The Institute is without dues of any kind. The only obligation on a member is to read as carefully as possible the various tentative drafts of the Restatement as they are issued and make any criticisms or suggestions that occur to him, and to attend the Annual Meetings, unless prevented by sickness, or other imperative cause. The other factor is that anyone who does not attend a Meeting of the Institute during two consecutive calendar years loses his membership; although where he has an adequate excuse for non-attendance he may be, and, of course, will be reinstated by the Council, the executive body of the Institute.

Shortly after our organization we were able to begin work on the Restatement as a result of the generous action of the Carnegie Corporation which appropriated to our use $1,075,000. This appropriation was first paid to us at the rate of $100,000 a year, then at the rate of $110,000 and, beginning with October 1 next, the remainder will be paid at the rate of $140,000 a year.

In June 1923 we began work on three subjects—Conflict of Laws, Contracts and Torts. Two tentative drafts of each of these Subjects have appeared and been discussed at the Annual Meetings held last year and this year. In Conflict of Laws the tentative drafts cover the introductory matter, Domicil and Judicial Jurisdiction; in Contracts, The Formation of Contracts and Consideration; in Torts, the topic of the Infringement of the Rights of Personality, that is, Assault, Battery and False Imprisonment, though not all the defenses thereto have yet appeared.

In November 1923 we began work on the Subject of Agency, and at the last Annual Meeting a tentative draft in that Subject covering all the introductory matter, as well as Ratification, was submitted and discussed. The Subject of Business Associations was begun in May, 1925. The first tentative draft of a part of the Subject Corporations probably will be submitted to the members next winter. The increase in the amount paid annually by the Carnegie Corporation to $140,000 will enable us to begin work on Property in the fall.

It will be noted that our method of procedure involves the taking up first of what may be termed the more fundamental common law Subjects.

It is our hope to complete in about five years from now the Subjects of Conflict of Laws, Agency and Contracts, that part
of the law of Corporations which lends itself to restatement, to produce a substantial part of the law of Torts, and so much of the law of Property as relates to the principal estates in land.

I have stated that the third constructive idea in the Report on which the Institute was founded is that the Restatement should be the product, first, of scientific research and analysis, and, second, that the results of this scientific work should be tested and corrected by wide practical experience. The way in which the work is being done is to appoint a nationally known expert on the Subject to be restated as Reporter. The Reporter is primarily responsible to the Council for the production of the preliminary drafts. Around each Reporter is built up a group composed of Advisers and Assistants. The Assistants vary from men who are of equal standing and experience with the Reporters, to young men employed for the purpose of collecting the decisions bearing on specific questions. When a Reporter has completed a preliminary draft of a portion of the Subject it is printed and sent to the Advisers. A conference is called at which the Report is gone over section by section. At first these conferences usually lasted only three days. They are now apt to extend over a week or more. At the conclusion of a conference the draft is returned to the Reporter who produces another preliminary draft in the light of the discussions and action at the conference. This second draft is printed and sent to the Advisers and discussed at another conference in the same manner as the first draft. The work thus proceeds through a series of preliminary drafts from conference to conference until a preliminary draft is produced which is considered by the Reporter and his Advisers to be under all the circumstances as nearly perfect as they can make it.

The Council of the Institute meets each year in New York in December and devotes several days to going over section by section the drafts submitted by the various groups. Drafts considered by the Council are, as amended by them, submitted as tentative drafts to the Members and to the Annual Meeting for criticism and suggestion.

All those engaged in the work are so impressed with the importance of securing the widest possible criticism of the various tentative drafts by representative members of the legal profession in all parts of the United States that the Institute is now asking all the State and also the principal local bar associations to appoint committees to examine the drafts, to send in criticisms and suggestions to the Institute, and to secure the discussion of the drafts at the meetings of their respective associations. Fifteen associations have already appointed com-
mittees, and the end of the year will, we hope, find many more in operation.

We have also worked out a system by which the various bar associations may purchase, in lots of 25, copies of the various drafts for resale to their members or, if they prefer, permit their members to purchase copies directly from the Institute. Next fall many of the schools will begin to use the tentative drafts in their respective classes. In this connection I desire to emphasize the fact that the Institute is not engaged in the sale of these drafts for profit. It is not a book-selling organization. The prices at which the drafts are sold cover the actual cost of printing, paper and distribution and no more.

I hope I have said enough to show that, during the next four or five years, we want these tentative drafts to have the widest possible examination and practical use. We want them tested by the practicing lawyer, by the judge and by the law teacher, and we want all the criticisms and suggestions that we can get. Many persons have the idea that because these drafts have been prepared by men who have devoted in many cases their lives to the particular subject of the draft, and that neither time, money nor labor has been spared, that therefore no improvement will come as a result of criticisms and suggestions from lawyers, no matter how skilful they may be, who have only a comparatively superficial knowledge of the particular Subjects and no time to give the tentative drafts an exhaustive examination. Practical experience, however, has already demonstrated that this is not so. Of course, many criticisms and suggestions received are not helpful, but we have already received a sufficient number of helpful suggestions to show that no work of this kind can be supremely well done until the tentative drafts carefully prepared as they should be have received wide examination and criticism.

A wide and critical examination on the part of the bench, the bar and the schools is necessary in order that the work shall be supremely well done, and unless it is supremely well done, it had better not be done at all.

It is, however, also necessary to carry out the fourth idea which is found in the Report to which I have referred which is that the official publication of the Restatement of the law of a Subject should be regarded by the legal profession as prima facie authoritative. This cannot be merely because the work is supremely well done, though that is one of the essential conditions. The bench and bar and the schools must develop the consciousness that it is their work; that the Institute is their agency, and that each member of the legal profession has a part to play in the development.
It is also necessary that through the test of practical experience the profession finds that the work is good. There is no reason why the profession, by using the tentative drafts, should not, besides noting defects and helping to correct them, learn to know the practical benefits resulting from the use of the Restatement. When the judges of a court write to us that they have used this or that tentative draft in an instant case and found it most helpful then we know that to that extent at least we are approaching the object of all this expenditure of time, labor and money. The final revised drafts will undoubtedly correct many errors in the tentative drafts. Some topics may be entirely revised. But there will be sufficient similarity between the ultimate official drafts and the tentative drafts to enable us to say now, that if these tentative drafts are not a real help to the judge, the lawyer and the law teacher and student, the work had better come to an end at once.

We who are devoting the best that is in us to the work have confidence that in spite of defects you will find these tentative drafts of the Restatement helpful, and as they cover a larger and larger portion of the common law, still more helpful. We are, therefore, not afraid of the practical results of their wide distribution. We want the members of the Indiana Bar Association and of every other bar association to secure and use them. We need your critical and constructive suggestions. We also need your confidence in the ultimate success of the work, and we believe that the more you come in contact with these tentative drafts the more confidence you will have that the work of the Institute will result in the preservation of the common law system of making and expressing law.

V

THE CONSTITUTION

By Collier Young

"America is the emblem of equality, the personification of individual freedom, security and happiness. Living and working under these basic human principles, the American people have experienced 137 years of marvelous expansion, progression and prosperity, retarded in their civilizing course only by nature's limitations.

PRE-EMINENT IN WORLD.

"And now that great world power which had its humble origin in that time-honored hall in Philadelphia, in the epoch-making year of 1789, stands pre-eminent among the nations of the earth."
Not by military power or coercion in any form have we attained our lofty position, but by strict adherence to the precepts of democracy and by the careful preservation of a Constitution erected on the firm foundation of complete liberty and justice to all, a Constitution which remains in its entirety, ladies and gentlemen, the safest and surest guarantee of human rights under sound government in all the world. So it was for the United States of America to give to the world, the first written, rigid constitution and to sound the keynote of democracy under that Constitution, to civilized mankind.

"Most of the fundamental principles incorporated in the American Constitution were not original in their import, but were the direct results of eight centuries of Anglo-Saxon bloodshed and sacrifice in opposition to despotism and anarchy. However, the framers of this glorious instrument made two distinct and invaluable contributions to constitutional government. First, the dual form of government in which the sovereignty of the states was not in any way impaired by the establishment of a strong central government operating directly on the people for the first time in history.

A NATION OF INDIVIDUALS.

"All former confederations had presided over states or communities, but the American polity became a nation of individuals, doubly protected by the state and nation, with adequate limitations on the powers of each through the Constitution. The states were intrusted to guard the personal liberty of its citizens and to deal with its domestic problems, while the federal government was to make and enforce the law of the land and to protect the political liberty of the nation. But neither the states nor the federal power were sovereign, for the final authority and decision rested with the people. This ingenious system of successfully governing a heterogeneous, wide spread race gave to the world the most feasible plan ever devised for the protection of personal and political liberty in a great democracy.

"The second and perhaps the most perfect contribution this nation has made to government is found in the wisdom of American jurisprudence. The theory of judicial supremacy of the courts was a real brain child of that distinguished assembly which framed our Constitution. In the establishment of that veritable shrine of justice the supreme court, to which the citizens, the state and the nation could appeal, all human rights were now protected by force of law. Under wise and impartial interpretation by the supreme court the Constitution has become a flexible, living, organic thing. This tribunal has preserved federal peace and harmony as has no other governmental agency
and shines forth in all its glory as America’s greatest single contribution to constitutional government.

ALTERED ADMINISTRATION COURSE.

“These two original American contributions, the dual form of government, the United States supreme court, have altered the whole course of the administration of the democratic form of government, and have been instrumental in the successful formation of the governments throughout the world since that time.

“But the most vital contributions of our nation are not those that are distinctly original. It is in the finest development of the fundamental laws of the social order America has led the way. Our country has preached the gospel of human rights to humanity and has shown, to the eternal betterment of mankind, the strongest and best government is founded on the will of the people. For in no other country of the globe does the individual enjoy such privileges of freedom under government as in our own fair land; freedom in work, freedom in play, freedom in expression and freedom in worship. Yet the fathers of this nation wrote in the Constitution itself the cardinal virtue of self restraint, which has been the marvel of succeeding generations, protecting man against man, the people against the government and the federal power against the whims and caprices of the people. Suffice it to say, my friends, American government has humanized, clarified and made omnipotent liberty and justice and equality.

LED IN NATIONAL HAPPINESS.

“In our world reforming progress, America has led the nations in the final attainment of the principles that make for national happiness. It can now be said nowhere in the world, ladies and gentlemen, is private property so secure, is religious toleration so widely practiced, universal suffrage so generally extended, or the mass of the people so well educated. America has aided an now is fostering the civilizing growth of democracy throughout the world, a powerful impetus in the direction of better government in all lands.

“Our nation has stimulated the cause of free government in the contribution of the greatest minds and statesmen of all times who consecrated their very lives and fortunes to the principle of personal liberty and a government of the people. They were men unsurpassed for their foresight, integrity and achievement; they are America’s proudest gift to the world. Their influence for right in government has been far reaching, and their ingenious conceptions of a united confederation have been
persistently copied. America's contribution to constitutional
government is the wisdom of Washington, the pure legal reason-
ing of Marshall, the original genius of Hamilton, the peerless
statesmanship of Webster, the diplomacy of Franklin, the crea-
tive intellect of Jefferson, and the courage and conviction of Lin-
coln. Their lives, beliefs and efforts are glorious monuments to
the principles of constitutional government.

CONTRIBUTION TO GOVERNMENT.

"So in the origination of the dual form of government, in the
establishment of a supreme court, in the highest development of
the vital principles of democracy, and in the lives and achieve-
ments of our foremost statesmen, this nation has contributed in
a large and invaluable manner to the remarkable advance in
constitutional government throughout the world.

"America is a great world power of over 110,000,000 of peo-
ple, varying in their instincts, interests, occupations and be-
liefs, and living in an immensely vast domain, but our America
has persistently clung to the fundamentals of liberty, justice and
equality for all. And now for the further continuance of our
national happiness our country requires the patriotic uplift of all
its citizens.

"Constitutional government is not calling for blind worship
of its institutions, but intelligent and concerted support of them.
We have a mighty task, my friends, that of preserving and pro-
tecting these vital principles of democracy and the complex and
finely balanced machinery of government, but by the will of the
American people and by the grace of God we shall maintain
them."
LIST OF APPLICANTS TO INDIANA STATE BAR ASSOCIATION
OBTAINED SINCE ANNUAL MEETING 1925.

AKRON
    Chipman, Albert B.
    Hosman, De Witt

ANDERSON
    Beckman, Arthur A.

ANGOLA
    Carlin, Clyde C.
    Wood, Alphonso C.

ATTICA
    Whicker, J. Wesley

AUBURN
    Stump, W. D.

AURORA
    Peters, Crawford A.

BATESVILLE
    Wycoff, Paul V.

BEDFORD,
    Brooks, Wm. F.
    Fields, Albert J.
    Gowan, Charles R.
    Mellen, Robert L.
    Smith, J. L.
    Woolery, Marshall

BICKNELL
    Foncannon, Horace A.

BLOOMINGTON
    Blair, James W.
    Corr, Edwin
    Darby, J. Ernest
    Dunn, Frank J.
    East, Q. Austin
    Fields, Jess B.
    Hottel, Walter E.
    Lee, Harry A.
    Louden, Theodore J.
    Miers, Robert W.
    Morgan, R. L.
    O'Donnell, John P.
    Regester, John F.
    Sare, Thomas J.
    Sayre, Paul Lombard
    Waldron, Charles B.
    Wilson, James B.

BOONVILLE
    Ashley, Leonard
    Davis, James W.
    Davis, Ora A.
    Martin, Warren W.

BOSWELL
    Odle, Nathan W.

BROWNSTOWN
    Elsner, Edward P.
    Prince, Estella B.

CENTERVILLE
    Robbins, E. Earl

CLINTON
    Swayne, Charles B.

COLUMBIA CITY
    Strong, Donald Adair

COLUMBUS
    Kollmeyer, C. J.
    Long, Philip R.

CONNERSVILLE
    Broadus, L. L.
    Himlick, E. Ralph

CROWN POINT
    Bixby, C. W.
    Brown, Joseph Earl
    Killigrew, John
    Killigrew, John Earl
    Lisius, Fred G.
    Smith, Martin J.

DECATUR
    Heller, Henry B.

DELPHI
    Hanna, John L.

EAST CHICAGO
    Benedict, August
    Goldsmith, Max
Havran, Michael
Hershcovitz, Marcus

ELKHART
Anderson, Emil V.
Arnold, Ethan L.
Hughes, Forrest E.
Lee, Claude A.
Markel, Orvin H.
Nyce, J. R.
Owen, Dan W.
Trekelo, Frank J.
Wider, William E.
Woodford, L. E.
Barney, Clark H.
Sawyer, Glen R.

ELWOOD
Myers, Eli P.

ENGLISH
Lambdin, Sam. R.

EVANSVILLE
Bold, John D. T.
Cambron, C. Z.
Carter, James P.
Cutler, James T.
Darby, Phelps
Ensle, James F.
Fine, Isadore
Gore, Frank C.
Ireland, Emra H.
Kamman, Henry W.
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Keegan, Hugh Glenn

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Shambaugh, Willard
Shambaugh, William H.
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Kliott, Michael A.
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Stanton, John N.
Thiel, John W.
Thiel, Oscar B.
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Groninger, Frank C.
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MacFerren, Earle Edwin
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Masson, Woodburn
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Murray, Raymond F.
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Steiger, Frederick W.

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Hurst, Hurd J.
Kling, Edgar P.
Lawrence, Hugh P.
Lawrence, John F.
Matt, Adelbert W.
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Rees, Alton E.
Rhodes, O. F.
Rhodes, Russell R.
Sommer, Charles F.
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Richardson, Cornelius
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Vioni, Amendeo O.
Wilsdorf, Arthur

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VALPARAISO
Crumpacker, Grant

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