Open Court

North Carolina Law Review

OPEN COURT

A Course in the Administration of Justice

The faculty of the School of Law have felt for some time that the usual course of law school study has, in its concentration upon the doctrines of law, slighted another essential phase of a lawyer's preparation. The traditional courses do nearly all that can be done in school to prepare a student to serve his clients well, but they do very little to train him to serve skilfully the interests of his profession and his community by doing his part to promote efficiency in the administration of justice. The law student who will be the judge, the legislator, or the governor of tomorrow needs to learn something of legal statesmanship as well as legal craftsmanship.

The faculty has, therefore, instituted this year for the first time a course in the Administration of Justice. In the teaching of the course, all members of the faculty will participate. The class of forty students is divided into groups, and at each of the monthly meetings, the members of one of these smaller groups will report on particular phases of the general problem assigned for that month. These reports are debated and discussed by the entire class and the faculty. The program of monthly meetings is given below. All members of the Bar who are interested in any of the subjects are cordially solicited to attend and participate in the discussion. The dates, faculty supervisor, and subjects are:

October 17—Mr. McCormick, "The Organization and Functions of the Bar."

November 14—Mr. Breckenridge, "Arbitration and Conciliation."

December 12—Mr. McCall, "The Rule-Making Power."

January 16—Mr. Wettach, "A Ministry of Justice."

February 13—Mr. McIntosh, (1) Notice Pleading; (2) Settling Issues in Advance of Trial; (3) Summary Judgments.

March 13—Mr. Van Hecke, "Statute Law-Making."

April 17—Mr. Winston, "The Jury System."

The five papers which follow are the reports prepared by the special group of students assigned to the first meeting, and all relate to the general subject of "The Organization and Functions of the Bar." It will be understood, in view of the circumstances of their preparation, that they are not offered as final and authoritative treat-

ments of the subjects, and that they present not the opinions of the School or the Faculty, but merely the views of the individual students whose names are signed to the reports.

C. T. McCormick.

The American Bar Association—A Sketch of Its History and Achievements

On the 21st day of August, 1878, there was gathered in the court room of the Town Hall of Saratoga Springs, a group of the leading lawyers of the nation. They were there for the purpose of considering the advisability of establishing an American Bar Association.

The call was the result of a motion, in the Connecticut Bar Association, introduced by Simeon F. Baldwin of New Haven. Six hundred and seven circulars were sent to the leading lawyers in forty-one states and territories and the District of Columbia. Most of the invitations were in the handwriting of Judge Baldwin himself. And of the number invited, fifty attended and sixty-four messages of approval were received.

In substance, it was then stated that, "a body of delegates, representing the profession in all parts of the country, which should meet annually, for a comparison of views and friendly intercourse, might be not only a pleasant thing for those taking part in it, but a great service in helping to assimilate the laws of the different states, in extending the benefit of true reforms and in publishing the failure of unsuccessful experiments in legislation."[1] As is stated in Article VI of the Constitution, "the object . . . is to advance the science of jurisprudence, promote the administration of justice and the uniformity of legislation throughout the Union, uphold the honor of the profession of the law, and encourage cordial intercourse among the members of the American Bar Association." With this object in view seven committees were provided for at the first meeting.[2]

In order to promote the objects as set forth in 1878, it was necessary to establish requirements for admission for future applicants to the Association. After some discussion it was decided to limit

[1] 1 A. B. A. Rep. 4. The general historical data for this paper have come from the American Bar Association Reports and Journal.

[2] Committees were appointed on the following: Jurisprudence and Law Reform, Judicial Administration and Remedial Procedure, Legal Education and Admission to the Bar, Commercial Law, International Law, Publications, and Grievances. 1 A. B. A. Rep. 16.

the membership to those having practiced for at least five years.[3] In recent years the Constitution has been so changed that any person who is a member in the local bar association may become affiliated upon nomination by the local council, and upon the acceptance of said nomination by the General Council.

Many conspicuous men of the profession have been Presidents of the Association. In 1878, Mr. Roger Averill, of Danbury, Connecticut, called the first meeting to order and nominated as temporary chairman, Mr. John H. Latrobe, of Baltimore, who was unanimously elected. Election of officers was then held. Mr. Broadhead, of Missouri, was elected President. He was not a highly cultured man, but was a lawyer of great repute. He played a very important part in preventing Missouri from seceding from the Union. Some of the others have been: William Howard Taft, Charles E. Hughes, David Dudley Field, J. F. Dillon, Francis Rawle, Simeon E. Baldwin and John Randolph Tucker. Gurney E. Newlin, of Los Angeles, is now President. There have been thirty-eight different ones during the fifty-one years of its existence.

In framing the Constitution and By-laws in 1878, it was provided that the President "shall open each annual meeting of the Association with an address, in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several states, and by Congress during the preceding year. It shall be the duty of the member of the General Council from each state to report to the President, on or before the first day of May, annually, any such legislation of his state."[4]

But in 1913, this rule was abolished, and thereafter the President selected his own subject. In 1914, William H. Taft spoke on "Some Needed Federal Legislation." In 1916, Elihu Root spoke on "Public Service by the Bar." In his address, "Liberty and Law," Charles E. Hughes delivered a powerful rebuke to the growing intolerance of his time. Though never president of the Association, James M. Beck, in 1921, read a paper on the "Spirit of Lawlessness." In recent years many of the speakers have been chosen from foreign countries. On foreign soil for the first time, the Association in 1916, held its annual meeting in Montreal. The Canadian Bar, in-

[3] The Constitution in 1878 provided that "any person shall be eligible to membership of this Association who shall be, and shall, for five years preceding, have been, a member in good standing of the Bar of any State. . . ." Const. Art. II.

[4] Const., Art. VIII.

spired by this conference, created an Association that has developed into a similar organization.

One of the important phases of the work of the Association is the publication of the annual reports and the *Journal*. The first volume of the annual reports contains only forty-nine pages, while the last contains twelve hundred and seventy-six. The *Journal* had its beginning in 1915 as a quarterly, under the supervision of Stephen S. Gregory, its first editor-in-chief, but has been since changed to a monthly. Its purpose is the publication of "announcements and transactions of the Association, which might also include some of the work of the various affiliated bodies, which have from time to time been organized under its auspices, such as the Association of Law Schools, the American Institute of Criminal Law and Criminology, and the Conference of Commissions on Uniform State Laws."[5]

Another important phase of the Association is its committee and section organizations. They have increased with the life of the Association in numbers, size, and achievements. Instead of seven committees as in 1879, there are now fifteen standing and ten special ones.[6] In 1923 the first section was created, on Legal Education, and three years later, one was created, on Mineral Law. Any member interested in the work of a particular section may participate.

It is largely through these committees and sections that the Association functions. Moreover, the new committees usually reflect the economic and social progress of the times. A committee on Air Law has been recently established. Obviously this committee has before it the whole field of the law of aeronautics. In a like manner each committee studies the problems pertaining to its field, arrives at probable solutions, and presents them at each annual meeting of

[5] 1 A. B. A. J. 1.

[6] At present the standing committees are: (a) Committee on Commercial Law and Bankruptcy, (b) International Law, (c) Insurance Law, (d) Jurisprudence and Law Reform, (e) Legal Aid, (f) Professional Ethics and Grievances, (g) Admiralty, (h) Publicity, (i) Publications, (j) Noteworthy Changes in Statute Law, (k) Memorials, (l) Membership, (m) American Citizenship, (n) Air Law, (o) Radio Law. See 53 A. B. A. Rep. 19.

Special Committees: (a) Uniform Judicial Procedure, (b) Changes of Presidential Inauguration, (c) Removal of Government Liens on Real Estate, (d) Copyright and Reproduction of Magna Charter Pageant, (e) Division of the Eight Circuit Court, (f) Education of Aliens and Naturalization, (g) Federal Taxation, (h) Invitation to British and French Born (i) Judicial Salaries, (j) Membership, (k) Representatives of the A. B. A. Conference of Delegates, (l) Supplement to Canons of Professional Ethics.

the Association. After the proposed bills have been approved, the committee proceeds to procure their introduction into Congress. Those bills which have not originated in the Association are studied, also, and upon the approval or condemnation of the Association are accordingly encouraged or disapproved.

An illustration of this process is seen in the fight waged by the committee appointed to oppose the recall of judges. It lasted from 1911 until 1919, and was finally won under the leadership of Rome Brown of Minneapolis. The strength of the whole Association was required to check this movement.[7] Another important work of the Association has been accomplished through its committee on Citizenship, in suppressing the spread of doctrines subversive of law, order, and constitutional government. Perhaps one of the foremost activities of the Association has been its work in raising the standards of legal education. Sixteen States, including North Carolina, have no general educational requirements as conditions precedent to the study of law. No definite period of law study is required in nine of our states. In one state one year of law study is required and in seven states, including the state of North Carolina, but two years are requisites.[8] In view of this deplorable situation, the American Bar Association, at its meeting in Cincinnati in 1921, adopted as a standard that applicants for admission to the Bar should qualify on presenting credentials showing two years of college work and three years of law study.[9] Eight states have either adopted the standards proposed or have announced their intentions to do so.[10]

The final justification for the work of the Association, however, must be sought in the record of those legislative measures actually enacted through its sponsorship. Because of opposition of a political nature, many of the bills recommended to Congress have failed, and consequently it requires a great deal of work to secure their introduction and passage. The bills are introduced by some member of the Association in Congress or by someone who is in sympathy with the proposed change. A few representative bills proposed and recommended by the Association and passed by Congress are: The Pomer-

[7] 22 N. C. B. A. Rep. 209.
[8] 30 N. C. B. A. Rep. 203.
[9] *Ibid.*
[10] Colorado, Illinois, Kansas, Montana, New York, Ohio, Wisconsin, and West Virginia. Fourteen states now require that substantially all applicants for admission must have at least two years of college training. See Advance Program, Memphis meeting Am. Bar Asso., p. 65 (1929).

ene Law,[11] an act authorizing the United States Supreme Court to review on *certiorari* decisions of the supreme courts of the states holding state statutes unconstitutional because of conflict of the Constitution, treaties or laws of the United States,[12] one which gives the personal representatives a right of action in the Federal Admiralty Courts for death caused by negligence on high seas,[13] the Ship Mortgage Act,[14] another relating to bills of lading and interstate and foreign commerce,[15] an act increasing the salaries of the Supreme Court judges,[16] and a bill providing for a biennial index to Session laws of the United States.[17]

A bill which deserves more than passing mention is entitled: "A Bill to authorize the Supreme Court to Prescribe Forms and Rules, and Generally to Regulate Pleading, Procedure, and Practice on the Common-Law Side of the Federal Courts."[18] The matter was mooted at the Chattanooga meeting of the Association, discussed for nine years, and the bill was finally introduced by Senator Frank B. Kellogg in 1919. The Association has been continually encouraging its passage, but it is still pending.[19]

Conclusion

The foregoing enumeration of the achievements of the Association is by no means complete. The Association has grown so rapidly that only a representative, and not an inclusive, list can be attempted. In 1878, there were seventy-five members; there are now twenty-eight thousand. It has grown in usefulness as well as in numbers. It has been suggested that its history falls into four periods: from 1878-1893 as a time of ploughing, from 1893-1904 as a time of planting, from 1904-1914 as one of maturing, from 1914-1924 as one of harvest. Since 1924 it "enters a new season and prepares . . . a new harvest."[20]

[11] 41 A. B. A. Rep. 424.
[12] 40 A. B. A. Rep. 622.
[13] 46 A. B. A. Rep. 399.
[14] 46 A. B. A. Rep. 399.
[15] 48 A. B. A. Rep. 299.
[16] 52 A. B. A. Rep. 364.
[17] 52 A. B. A Rep. 349.
[18] 39 A. B. A. Rep. 571.
[19] In his first speech to Congress, President Coolidge recommended that the American Bar Association Bill be passed, and in his last address he stressed that "it was a bill that should demand attention." 22 N. C. B. A. Rep. 89.
[20] 14 A. B. A. J. 522.

The purpose of its founders has echoed through half a century. It may be heard in the speech of E. D. Phelp in 1879, when he said, "But what final good, what permanent usefulness is reasonably to be expected from it, unless it be the creation in our profession, by common consent, by mutual intercourse and support, of a broad, nationally elevated, independent fearless spirit of constructive jurisprudence? The spirit that builds up and perpetuates, rather than falls down and destroys. . . ."[21]

H. L. LACKEY.

THE ACTIVITIES OF THE NORTH CAROLINA BAR ASSOCIATION IN STIMULATING LEGISLATION

I. *Historical Introduction*

The present North Carolina Bar Association is the outgrowth of an earlier organization about which little information exists. On January 21, 1899, sixty-two interested lawyers issued a call to the members of the bar to meet in Raleigh for the purpose of forming a new organization.[1] This meeting was held in the Supreme Court room on February 10, 1899, with one hundred and fifty-five members present. Seventeen members of the old organization met separately and passed a resolution to dissolve and turn over records and funds to the new body. Mr. J. B. Batchelor of Raleigh acted as chairman of the Meeting of Organization. A Constitution and By-Laws were drafted by Mr. J. Crawford Biggs of the University and were accepted after a favorable report by the committee to which they were referred. A Committee on Permanent Organization was appointed and suggested for officers Mr. Platt D. Walker, for President, and Mr. Biggs for Secretary-Treasurer. They were elected and inducted into office. On March 6 of the same year the Legislature granted a charter to the newly created body.[2] Its purpose was declared in the charter and Constitution to be "to cultivate the science of jurisprudence, to promote reform in the law, to facilitate the administration of justice, to elevate the standard of integrity, honor and courtesy in the legal profession, to encourage a thorough and liberal legal education, and to cherish a spirit of brotherhood among the members thereof."[3]

[21] 2 A. B. A. Rep. 173.

[1] Proceedings of the Meeting of Organization of the N. C. Bar Asso. 1 N. C. B. A. Rep 133. This volume is the source of the historical data above.

[2] Private Acts 1899, c. 335.

[3] Const. Art. II.

There were many well-known characters associated with the organization and early life of the Association. Of the one hundred and fifty-seven charter members, fifteen have in later years been President of the Association. Four have been members of the Supreme Court: Walter Clark, Heriot Clarkson, H. G. Connor, and Platt D. Walker. Other well known names appearing on the original list are T. W. Bickett, F. M. Simmons, and John Manning.

The first meeting was held at Morehead City on July 5, 1899. Two hundred and thirty-six were in attendance, including twenty-four judges invited as honorary members. President Walker sounded the keynote for the legislative activities of the Association in his address:

"We must by research and discussion discover the great principles which are best adapted to the wants and necessities of our people . . . and apply them in the enactment of such laws and in the modification of those that already exist as will make for their increased happiness and prosperity."[4]

Between this statement and the report of the Committee on Legislation in 1928 that "most of the suggestions which have emanated from this Association and the Judicial Conference have failed of consideration"[5] lies the account of many legislative measures discussed and a few adopted. A review of these measures is the theme of this paper. The value of such a study lies in its indication of the need of improvement in the methods pursued by the Association.

II. *Legislative Activities of the Association*

Wading through pages of routine committee reports, historical and inspirational addresses, and profuse panegyrics of former members, one finds the record of many issues raised at the forum of the Association. Often topics for discussion are suggested by the President's annual address, delivered pursuant to his constitutional duty to recommend desirable legislation. Quite as often the discussion is begun by a resolution or motion proffered from the floor. The normal fate of a resolution is reference to the Committee on Legislation. Its reports may therefore be considered as the most ready source to determine the success which has attended legislation sponsored by the Association.

[4] 1 N. C. B. A Rep. 11.
[5] 30 *ibid.* 221.

A chronological arrangement of the measures recommended and the results achieved has not seemed feasible. Less confusion will probably result from a classification according to subject matter. Appropriate references to the Reports of the Association will indicate the time of recommendation and enactment.

A. *Attorneys*

One of the earliest interests of the Association was to gain supervision over the professional conduct of the members of the Bar. The question of disbarment was accordingly first raised at the second meeting (II, 33). It was reported at the 1901 meeting that no bill had been presented (III, 22). The matter was again brought up in 1902 (IV, 97) and in 1904 (VI, 67). In 1905 a suggested draft was drawn (VII, 27), which, with some changes, was passed a year later (IX, 113). The Association was less fortunate with its suggestions for standards of preparation and entrance. At the recommendation of the 1900 meeting (II, 71), the Supreme Court changed the required period of study from one to two years (III, 15). The other two recommendations, though repeatedly urged, have not been adopted; to wit, examination of applicants by a committee of the Association (V, 31; VI, 60; VII, 26; VIII, 33; XI, 78; XIV, 189; XV, 101; XVIII, 87; XXVII, 38); and two years of high school training as a prerequisite to entrance (XXI, 169; XXIV, 65; XXIX, 76).

B. *Court Organization*

The Legislature has not been disposed to heed the behests of the Association in matters of court organization. There has been unsuccessful agitation within the ranks of the Association for the abolition of the system of the rotation of judges (XVIII, 79; XXVII, 38). Suggestions to change the number of judicial districts have not been favorably received (XVIII, 32; XV, 89). However, success has been accorded the recommendation for an amendment authorizing the appointment of emergency judges (XVI, 162), and the placing of solicitors on salaries instead of allowing them fees (XXV, 90; IX, 114; X, 76; XIII, 94; XIV, 117; XV, 89; XVI, 109).

C. *Juries*

None of the measures advocating jury reform have been pressed sufficiently to secure their enactment. This fact is the more distressing in view of their importance, as witness the nature of the pro-

posals, i.e. limited exemptions from service and reduced challenges (VI, 64); judgment by less than a unanimous verdict in civil cases (XVI, 108); the "struck jury system" (XVIII, 79); the abolition of a jury in equity cases (XXV, 41).

D. *Legal Literature*

Contrary to its apparent general policy, the Legislature has welcomed suggestions from the lawyers as to changes in publishing the source materials of the law to make for greater convenience and efficiency. Revision of the Code was provided for in 1903, after having been asked for on three separate occasions (V, 64). Control by the Supreme Court of the publication of its reports was asked for in 1904 (VI, 64), and passed in 1906 (VIII, 44). Methods of publishing recently enacted statutes were changed at the instance of the Association (X, 47). However, a movement to have the Supreme Court Reports digested seems to have been dropped (X, 40; XII, 101). At the 1927 meeting a resolution was passed to the effect that the Supreme Court be requested to take steps to prevent misuse of the State Bar examinations by non-residents (XXX, 11). It is encouraging to note that the 1929 Legislature passed a statute regulating this situation.[6]

E. *Procedure*

The recommendations in regard to simplification of procedure have met the same fate that attended those in regard to the jury system. Some of the suggestions have been: a revision of the Code to provide for prompter filing of pleadings (XIII, 94); to allow judges to express opinions on the facts of a case (XVIII, 31; XXIV, 74); to amend C. S. 1749 to allow the judge to take judicial notice of the laws of other states; and to abolish the demurrer (*ibid.*).

F. *Substantive Law*

The changes recommended in the field of substantive law have been few. It was early suggested to change the law of courtesy so that the husband's right would attach without the birth of issue (III, 47; IV, 102). This was not adopted (C. S. 2519). The right of married women to contract and the Workman's Compensation Act have been discussed and later adopted (VI, 64; XVIII, 265), but the records do not disclose enough connection between the recom-

[6] N. C. Pub. Laws (1929), c. 168.

mendation and adoption of these measures to hazard the assertion that the Association's influence was directly felt.

G. *Uniform Laws*

Organized effort in advocating uniform laws has been lamentably lacking. In 1900 a bill was presented authorizing the appointment of a commission of five on uniform laws to coöperate with the national commission (II, 11). This bill was defeated (III, 18). In 1916 the Association appointed such a committee from its own ranks (XIX, 171). No uniform legislation can be attributed to this committee, inasmuch as the N. I. L. and Warehouse Receipts Acts were in existence when it was appointed and its recommendations at the 1920 meeting for the adoption of the Uniform Conditional Sales and Fraudulent Conveyances Acts were not followed (XXII, 66; XXX, 220).

H. *Federal Laws*

The interest of the Association in federal legislation has been slight. In 1924 it went on record as opposed to the proposed Twentieth Amendment (XXVI, 143), but, of course, what effect on the defeat of this measure its action might have had is purely conjectural. In 1916 an unsuccessful movement was inaugurated to have a Supreme Court Justice appointed from this district (XVIII, 88) and to have a uniform number of Justices in the Circuit Courts of Appeal (*Id.*, 98). Finally, in obedience to an appeal from the American Bar Association, warm support has been given the bill now pending before Congress to make uniform the procedure on the common law side of the Federal courts (XVIII, 87; XXII, 209).

III. *Conclusion*

A statistical appraisal of the measures discussed in the foregoing sections is desirable. Approximately twenty-eight measures have been sponsored by the Association over a period of thirty years. Of these ten have been adopted. It is significant that the recommendations that have been most favorably received have concerned methods of improving legal source materials. Three of the ten measures were of this nature. An example of what may be accomplished through perseverance is found in the case of the disbarment statute, urged for seven years and the statute placing solicitors on salaries, urged for fifteen years. Perhaps the outstanding failure of the

Association has been in its attempt to gain control of the examination of applicants for admission to the bar. This has been attempted since 1903, and was again suggested by the President in the 1929 meeting.

A retrospective view over the thirty years of our Association's activity is not encouraging, nor should it be received complacently, when it discloses a total of but approximately ten recommended measures successfully enacted, with a majority of these restricted in their operation to the ranks of the legal profession itself. The need is indicated of suggesting measures of broader scope and of formulating a more systematic mode of presenting recommendations, if the Association is to accomplish the laudable purposes for which it was created—"to promote reform in the law, and to facilitate the administration of justice."

J. H. CHADBOURN.

THE GROWTH OF THE SELF-GOVERNING BAR

The state bar associations, in the form prevalent in the majority of states, are unable to cope with varied problems which naturally fall in their province.

At the Conference of American Bar Association Delegates in 1920 the plan of a self-governing bar with powers given by statutory enactment was discussed. Mainly through the efforts of Elihu Root, the incorporated bar was adopted as the most effective plan for state organization.

Some of the salient points of this plan are as follows: All lawyers are required to join the bar. The governing power is placed in the hands of a Governing Board, elected by a vote of all members of the bar. Those who are unable to attend the meeting vote by mail. Each district, judicial or congressional, has a representative on this board. The power to disbar and discipline members, to set entrance requirements and conduct entrance examinations, is given to the bar. All of these powers are handled through the Governing Board. Revenue is derived from a five dollar initiation fee and from dues of two dollars a year.[1]

The idea of an incorporated bar began to grow at once. The bar associations of Nebraska,[2] Michigan, Illinois, Ohio, Florida, North

[1] 10 J. Am Jud. Soc. 111.
[2] 6 *ibid.* 80.

Dakota, and California took the lead in 1920-21, appointing committees of investigation. The reports of all these committees were favorable. Acts, drawn up and approved by these various bar associations, were submitted for legislative action.[3]

The Illinois and Ohio associations met with such strong legislative opposition that they have practically abandoned the plan. The Michigan, North Dakota, and Florida bars got the act through their Senates but failed to get it by the Houses. All three associations were willing to remodel the act in some parts in order to meet the legislative objections.[4]

North Dakota was the first state to adopt the plan. There, after an initial failure the Act was presented again, and this time the legislature redrafted the plan and passed it. It still gave the bar the power it was fighting for.[5] The bar association of Alabama was the second to be successful in overcoming opposition. After the Act had failed in the House twice, a committee was appointed to go on the floor of the House and explain and answer any objections. The committee did its work well and Alabama adopted the Act, almost identically as proposed by the National Conference, in 1923.[6]

The Idaho state association was the third to obtain legislation providing for an incorporated bar. It has had an unusual experience. After the Act was passed and the bar established,[7] a test case proved the bill unconstitutional in some respects.[8] The Idaho bar immediately revised the bill and presented it to legislature again where it passed without opposition. The success of the incorporated bar in this state was gratifying. But in 1928, the Act was again held unconstitutional[9] in some of its most vital parts. It is a matter of conjecture as to what the Idaho bar will do.

These three state associations obtained their charters in 1923-24. In 1925, the California bar, led by Joseph J. Webb, made a determined fight to procure the passage of a similar bill. They succeeded

[3] 3 *ibid.* 148.
[4] 5 *ibid.* 54.
[5] 5 *ibid.* 15.
[6] 7 *ibid.* 86.
[7] 7 *ibid.* 92.
[8] Jackson v. Gallet, 39 Idaho 382, 228 Pac. 1068 (1924).
[9] In re Edwards, 266 Pac. 665 (Idaho 1928), held that the state bar had no power to discipline, or disbar, or suspend, as it was a delegation of the judicial powers of the Supreme Court, that the state bar had right to recommend disciplinary measures only, that the creation of a governing board was not unconstitutional, and that the defects in some parts of the act did not make the entire statute void.

in getting the bill through the legislature but an unfriendly governor vetoed the bill.[10] In 1927 another effort was made which was successful.[11] In the same year New Mexico passed a bill providing for an incorporated bar.[12] In 1927, Nevada also passed a bill which gave the bar self-governing power, modeled largely after the California enactment.[13] The Oklahoma bar presented its act to the legislature in 1927. It passed the Senate, but was too late for action in the House. At the last meeting of the Oklahoma legislature, however, the bill passed without opposition.[14]

The Michigan and Florida bars are still fighting to get the acts through their legislatures. Michigan is revising the bill after two failures. Florida has been to the legislature four times without success.[15] The bar associations of Georgia and Arizona have approved the incorporated bar plan and intend to present it to their respective Legislatures during the coming year.[16]

The New York Bar Association has finally approved the plan. The proposal originally introduced for its approval met with a great deal of opposition directed against that part of it relating to the assets of the local associations. The section in question provided that the local associations transfer all of their assets to the state bar. As the New York City Bar and the New York County Bar possessed valuable property running into millions of dollars, they naturally opposed the plan. This struggle is thought to be unnecessary. A new bill is being worked out which is expected to meet with approval.[17]

In many states where the incorporated bar idea met with determined opposition, new plans for bar integration were sought. The bar association of the state of Washington adopted what is known as the affiliation plan. By it the local associations apply for membership in the state association. All lawyers who join the local association automatically become members of the state association. From the standpoint of membership this plan is highly successful. But the powers of the state bar are not increased. It is doubtful whether this plan will hold its members together over a long period of time.

[10] 9 J. Am. Jud. Soc. 5.
[11] 12 *ibid.* 13.
[12] 9 *ibid.* 5.
[13] 11 *ibid.* 186.
[14] 9 *ibid.* 106.
[15] 13 *ibid.* 49.
[16] 9 *ibid* 106; 8 *ibid.* 81.
[17] 9 *ibid.* 106.

In Washington, in 1924, ninety per cent of the lawyers belonged to the state association.[18] But in 1926, according to unofficial reports, the membership had decreased.

Minnesota adopted the affiliation plan after the incorporated bar had suffered a decisive defeat in the legislature. It is thought that the former plan is being used as a stepping stone to make another fight for the incorporated bar.[19]

Wisconsin and Oregon have adopted the affiliation plan in preference to the incorporated bar.[20] The Wyoming bar is seriously considering it. The Pennsylvania state association has adopted a form of affiliation. It allows the local associations to send representatives to the State Convention, but does not allow them to make a motion on the floor of the convention or to vote on any measure considered by the convention. These local delegates, however, do have the power to veto any measure passed if they can muster thirty negative votes.[21]

The Virginia bar was unwilling to give up the social side of the association's work. As a result it has worked out a plan by which it has two associations in one. One is the incorporated bar; the other is a voluntary association to foster cordial relations between the lawyers. Although the plan has not been officially adopted, its approval is expected. The only opposition to the plan arises from the fact that the voluntary association will be at a distinct disadvantage in securing members.[22]

An example of the work the incorporated bar is capable of accomplishing is seen in California. The bar has been divided into five sections, each section to study the existing conditions in different branches of the law in that state. They are Civil Procedure, Criminal Law and Procedure, Courts and Judicial Officers, Regulatory Commissions, and Professional Conduct. Each section, with the approval of the state bar, will make suggestions to the Legislature for improvement in the special field concerned. Membership is voluntary. Within a few weeks after the adoption of this plan over twenty-five hundred lawyers had offered their services for work in one of these sections.[23] Furthermore, sixty days after the adoption of the incorporated bar in this state it held its first meeting with

[18] 8 *ibid.* 58.
[19] 11 *ibid.* 55; 12 *ibid.* 126.
[20] 12 *ibid.* 126.
[21] 12 *ibid.* 144.
[22] 12 *ibid.* 59.
[23] 13 *ibid.* 61.

over one thousand lawyers in attendance. The first outstanding work in the disciplining of members was an investigation of bribery charges brought against Judge Carlos Hardy in the trial of Aimee Semple McPherson. Judge Hardy was fined for contempt of court in refusing to answer the questions of the investigation committee. The case was taken to the Supreme Court, *State Bar of California v. Superior Court in and for Los Angeles County*,[24] which decided that the bar did not have the power to discipline judges. A rehearing was denied June 27, 1929. But this case, together with the case of *In Re Cate*,[25] established beyond doubt the constitutionality of the incorporated bar in California.[26]

Two facts may be established from a study of the growth of the incorporated bar. First, that it has had a contagious growth. The states located near those possessing the incorporated bar are intensely interested in its progress and success, and are either investigating the idea or making plans to adopt it. Second, the incorporated bar has been adopted only after the lawyers of each state have given themselves wholeheartedly to its support, and have informed the legislators, as well as themselves, of its possibilities.

The rapidity with which the incorporated bar has grown is sufficient proof of its merits. It was adopted by one sparsely populated state in 1923. Today there are self-governing bars in seven states; it is before the Legislatures of three more. The bars of six states are preparing bills to present to their Legislatures which will make the profession self-governing. Bar integration in the form of the affiliation plan has been adopted by four states; and the bar associations of four more states have practically decided to use that plan.

It is not unreasonable to expect bar integration in all of the United States before many more years. When it comes the lawyers in each state will form a closely-knit unit, as in England and Canada.

P. J. STORY.

ARGUMENTS FOR AND AGAINST THE SELF-GOVERNING BAR

Whether or not a thing is of practical value depends largely on the question whether or not it is an improvement on the system in use. Before the organized Bar plan was first proposed the voluntary association existed in almost every state. Its scope was state-wide,

[24] 278 Pac. 432, Cal. 1929.
[25] 57 Cal. App. 267, 273 Pac. 617 (1929).
[26] 13 *ibid.* 61.

but only included in its membership those lawyers who for some reason felt the urge to join. These voluntary associations were, and still are, where they exist today, weak in that they embraced only an average of about twenty-five per cent[1] of the Bar's membership, have no official status and no powers of discipline over the members of the Bar as such, and are limited in their internal discipline by the fact that the great mass of the Bar is outside of their jurisdiction.[2] North Carolina is more fortunate in this respect than most of the voluntary associations existing today, for in June, 1928, about fifty-two per cent of the lawyers of the state were members of the association.[3]

There is little continuity of purpose and accomplishment in the voluntary association, for the members are irregular in attending the meetings. In 1927 only about thirty per cent of the members of the North Carolina association attended the annual meeting,[4] and in 1928 about twenty-six per cent were present.[5] The officers have little power, for the associations have little power. If it were not for a faithful few the machinery of these organizations would cease. As a result it becomes necessary for these faithful few to govern the organization. The average member has but three assured points of contact with the association: (1) He pays his dues, (2) he receives a report of the annual meetings, usually months after they are held, and (3) he votes for officers, provided he attends the meetings.[6]

In contrast with this situation we have the plan for an integrated Bar. This plan eliminates to a great degree the waste of energy and time expended in obtaining membership, permits self discipline subject to judicial review, and provides the financial means needed by virtue of a larger number of members paying dues.[7]

Many arguments may be adduced in favor of the plan, but an attempt will be made here to point out only the most important of these:

1. All the lawyers in a given state would be members of the association. This permits concentration of effort and marshaling of

[1] *Redeeming a Profession,* 2 J. Am. Jud. Soc. 105, 106 (1918).
[2] Statement from Committee of American Bar Association Conference of Delegates Report, 4 J. Am. Jud. Soc. 83, 84 (1920).
[3] 30 N. C. Bar Ass'n. Rep. 27, 121 (1928). Membership being 1,099 out of 2,115 lawyers in the state.
[4] 29 N. C. Bar Ass'n. Rep. 20, 151 (1927). Total attendance was 325 out of a membership of 1,098.
[5] 30 N. C. Bar Ass'n. Rep. 27, 246 (1928). Total attendance was 288 out of a membership of 1,099.
[6] *Redeeming a Profession,* 2 J. Am. Jud. Soc. 105, 107 (1918).
[7] *Progress Made in Bar Organization,* 11 J. Am. Jud. Soc. 55 (1927).

the Bar's entire force in favor of better administration of justice, and calls for respect of its suggestions on the part of the legislature. In this way the confidence of the public may be obtained.[8]

2. The organization would supervise admissions to, and expulsions from, the Bar.[9] By supervising admissions a higher degree of education could be demanded of the applicants, as well as good moral character, which would be investigated by the committee on admissions. In this way the intellectual and ethical standards of the Bar could be maintained by denying entrance to the unfit. With the power to expel or suspend a lawyer considered unworthy of the profession, the incorporated Bar would have within its grasp the power to force fair dealing with the public, and among the members. The lack of disbarment powers is deeply felt by the voluntary associations, whose powers along this line extend only to recommendations to the courts.[10] In 1927 the Grievance Committee of the North Carolina association seriously urged that some power be given the organization itself to deal with unprofessional vagaries covered by statute, and in this way prevent the cases being deferred by the court.[11] The need of power to weed out shysters and ambulance chasers is a strong argument for the incorporated plan.

3. It would integrate the Bar and make it more homogeneous. The organization would have definite purposes, such as higher standards of conduct, the accomplishment of needed legal reforms, the simplification of civil and criminal procedure, and the better administration of justice. Having definite purposes for which to strive the lawyers would act as a unit instead of at cross purposes.[12] Through means of greater revenue derived through a larger membership paying dues, more frequent reports of the activities of the association could be afforded. As an example the California organization publishes a monthly report called the *California State Bar Journal,* which contains association reports, suggestions for the future, and useful

[8] *An Integrated Bar,* 12 VA. L. REG. (N. S.), 20 (1926); *Progress Made in Bar Organization, id.*

[9] Model Bar Organization Act, 10 J. Am. Jud. Soc. 110 (1926). "Probably of more importance than expulsion or suspension of the unworthy from membership in the Bar Association is the proper determination of admittance to the profession." Address before the Georgia Bar, 1927, by Mr. Borden Burr, of Birmingham, Ala., 3 Ala. L. J. 32, 39 (1927).

[10] For example, see the provisions for disbarment in North Carolina, N. C. Con. Stat. Ann. (1919), §§208-215.

[11] 29 N. C. Bar Ass'n. Rep. 93 (1927).

[12] *An Integrated Bar, id.*

articles. This keeps the members in constant touch with one another and insures a homogeneous group.

4. A strong self-reliant organization would be substituted for the present weak state associations. Instead of only yearly meetings with no activities between, the organized associations would have continuous duties for each member, such as organizing and carrying through definite programs of local associations, suggesting needed reforms, and aiding to clear up congested court dockets. The performance of these duties would require continuous activity throughout the year, and promote a continued interest in the organization.[13] This would do away with the control of the faithful few, which is so necessary in the voluntary association. The Board of Governors, or Commissioners, under the incorporated plan are nominated by petition sent to the secretary, and signed by a certain number of the members. A petition may suggest one or more names. Voting is then done by mail, not at open meetings, so that each member may vote without attending the meetings.[14]

5. The young lawyer, by automatically becoming a member of the association when he received his license, would gain the benefit of the organization during the formative period of his professional life. This would bring him into closer contact with the older heads, and eliminate to a great degree that feeling that he is on the outskirts of the Bar and must attempt to get on the inside. Under the voluntary association this is not true, for many do not join as soon as they begin to practice, and in some instances it is argued that no lawyer should be admitted until he has had time to establish a good reputation.[15]

6. A continuity of purpose could be maintained. Under the voluntary association there is little connection between the business at one meeting and the next, and one administration ignores the latter.

The objections raised against Bar integration are almost as numerous and varying as the temperaments of the objectors. The most notable follow:

1. That there is a strong possibility of the dominance of the unfit and indifferent members of the Bar in the incorporated plan, and that the better members of the profession would be swamped

[13] See CALIFORNIA STATE BAR JOURNAL for an idea of the activities of the Organized Bar.

[14] Cal. Bar Act, 9 J. Am. Jud. Soc. 7 (1925); N. M. Bar Act, 9 J. Am. Jud. Soc. 5 (1925).

[15] *An Integrated Bar, id.*

by the shysters. This was one of the chief objections in New York[16] where there are many foreigners and ambulance-chasers. This objection has been answered by advocates of the plan in two ways: (a) This has not been true in the seven states now having incorporated Bars, and (b) to eliminate this possibility the first practical step of the organized association would be to exert a prophylactic influence which would lead to the elimination of the unfit.[17]

2. That incorporation by statute results in compulsion on lawyers to organize themselves, and compulsion is not cherished by the profession. This is in a sense true, but no organization by statutory method should be attempted unless the majority of the lawyers of the state are favorably impressed. California waited until the great majority of the Bar were firmly behind the bill, and when it was first vetoed there were over three thousand telegrams and letters of protest to the veto on the governor's desk. The lawyers of Alabama and North Dakota favored the measure before any attempt was made to carry it through the Legislature. After a favorable impression is created the idea of compulsion is dissipated by the lawyer's activities to get the bill through. The great majority then look upon the act as a means of unlocking latent powers, whereas compulsion implies the limitation of freedom.[18]

3. That integration would constitute the Bar a class within itself, undemocratically set aside from the community. This argument overlooks the fact that a lawyer is already a member of a special class, an officer of the court with certain duties and privileges which a layman can only assume by passing required examinations. It is difficult to see how membership in an all-inclusive association will create any more of a caste-system than is at present in effect. The lawyer by virtue of his duties remains constantly in contact with the public, and for this reason he cannot draw aside from the community.[19]

4. That such legislation is designed to aid the corporation lawyer, or the so-called "aristocrats of the Bar," at the expense of the smaller fellow and the country practitioner. This argument does not take into consideration that both classes pay the same dues, get the same vote, and as the vote is by mail the small practitioner does

[16] 12 VA. L. REG. (N. S.) 169, 170 (1926).
[17] *Progress Made in Bar Organization, id.* See also Minn. Bar Ass'n. Rep. 1920, at p. 72.
[18] *An American Bar in the Making,* 10 J. Am. Jud. Soc. 103 (1926).
[19] 12 VA. L. REG. (N. S.) 169, 171 (1926).

not have to incur the expense of going to the meetings in order to have a voice in the government of the organization.[20]

To all lawyers the idea of Bar incorporation comes at first as something original; something alien to accustomed thinking and therefore hard to visualize; and as something hostile to the present plan of Bar organization. For this reason there is at first an attitude of inertia, conservatism, and indifference prevailing until someone like Judge Webb of California, who spent 133 days out of one year traveling over the state in the interest of the plan,[21] leads the way to a better understanding of the proposition, and consequently to its adoption.[22]

The Movement in North Carolina

It seems that the first mention of the incorporated Bar in North Carolina was by Mr. T. W. Davis in his presidential address to the 1921 meeting of the Bar Association. In this speech the idea of incorporation was explained and recommended.[23]

At the 1926 meeting of the association a committee headed by the Hon. I. M. Bailey was appointed to investigate the incorporated Bar.[24] In 1927 this committee reported that in its opinion the advantages to be obtained from an all-inclusive organization materially outweighed the disadvantages that might arise, and seriously proposed the plan as a solution to the problem confronting the profession of the state.[25]

In the 1928 meeting the late Mark W. Brown, then president of the association, said that the question of whether there was reason to hesitate longer in the incorporation of the Bar of North Carolina should be settled at that meeting.[26] Regardless of this the question was not settled, nor were any definite steps taken at the 1929 meeting.

At present there is no movement for the incorporated Bar in North Carolina, but the plan is rapidly sweeping towards the eastern states, and the lawyers of this state will some day be forced to give the proposition serious consideration.

A. W. GHOLSON, JR.

[20] *Bar Organization in Kentucky,* 16 KY. L. J. 330 (1928).
[21] *An American Bar in the Making, id.,* at p. 107.
[22] *Conference on Bar Organization,* 10 J. Am. Jud. Soc. 11, 17 (1926).
[23] 23 N. C. Bar Ass'n. Rep. 6 (1921).
[24] 28 N. C. Bar Ass'n. Rep. 169 (1926).
[25] 29 N. C. Bar Ass'n. Rep. 131 (1927).
[26] 30 N. C. Bar Ass'n. Rep. 9, 11 (1928).

COULD THE EFFECTIVENESS OF THE ORGANIZED BAR BE IMPROVED?

During the thirty-one years of the existence of the State Bar Association, various questions concerning the value of the organization have arisen, and most phases of its activity or inactivity have been discussed.

The major portion of the criticism directed against the associations, state and local, concerns the things they do not do. Almost equally prevalent is criticism of the failure of the association to follow up and take concrete, definite action on the reforms and suggestions made during the association meetings. In this paper we are attempting to avoid the usual type of criticism, and instead offer constructive suggestions on what to do and how to do it.

Before entering this discussion, it may be well to examine in passing the skeleton organization of the North Carolina Bar Association. The officers are a President, three Vice-Presidents, and a Secretary-Treasurer. The Constitution and By-Laws provide for the organization and prescribe duties for each of several standing committees.[1] An Executive Committee exercises the general management of the affairs of the association. The duties of the Committee on Legislation and Law Reform are to scrutinize proposed changes in the law, to promote those that appear to be beneficial, to check, as far as possible, those that appear to be ill-advised, and to consider and recommend to the association those that will facilitate the administration of justice. The Committee on Uniform State Laws is required to promote uniformity of legislation. The duty of the Committee on Courts and Court Procedure is to examine and report on changes in the procedure of the courts. The Judiciary Committee is required to observe the practical working of our judicial system. The Committee on Legal Education and Admission to the Bar is to take into consideration the subject of legal education and other requisites for admission to the bar. Other standing committees are Admission to Membership, Memorials, and Legal Ethics, with duties corresponding to what their names imply.

One of the first and most important possible avenues of bar activity is the matter of discipline. The North Carolina Consolidated Statutes provide for disbarment and suspension of attorneys.[2] Pro-

[1] 30 N. C. B. A. Rep. 251-271.

[2] N. C. Cons. Stat. Ann. (1919), §§204-215.

ceedings may be instituted and prosecuted by the Committee on Grievances of the North Carolina Bar Association,[3] or a Superior Court Judge may institute an investigation of any reported cause and appoint a commission with power to compel attendance of and examine witnesses with reference to the reported cause.[4] The Committee on Grievances is required to hear all complaints against members, and any complaints which may be made in matters affecting the interests of the profession. This committee must formally institute final proceedings for disbarment or suspension in cases involving willful deceit or fraud in the practice of the profession and soliciting business.[5]

During the past few years the Grievance Committee has annually received and acted upon upwards of fifty complaints submitted by aggrieved parties. The Committee settles most of these complaints between the parties, and the matter is dropped. The policy of the Committee is to take no further action where, as in most cases, the attorney's conduct has involved only irregularity in the matter of remittances.[6] The more serious cases are referred to the solicitor of the judicial district for action. The ambulance-chasing situation is a menace to the profession, especially in the larger cities. This is a field in which the bar associations can accomplish a great deal. Three recent and impressive victories have been scored in other states.

Following a continued demand by members of the Lawyers Club of Milwaukee, the Board of Directors started an investigation of the ambulance-chasing situation. Authority was found sustaining the power of courts of general jurisdiction to deal with all abuses arising in their jurisdictions. It was found that one of the directors was retained by defendant in a case where a professional ambulance-chaser, not a lawyer, was suing a former employee for balance due him arising out of the ambulance-chasing business. This plaintiff was closely cross-examined as to the nature of his dealings, and he boasted of his achievements and stated that he had over six hundred cases then pending. The directors then drafted a petition to the court and attached this ambulance-chaser's testimony. The court directed a hearing which was in the nature of an inquisition and

[3] *Ibid.*

[4] N. C. Pub. Laws (1929), c. 287.

[5] N. C. Cons. Stat. Ann. (1919), §208, which, apparently, is not changed in this class of cases by N. C. Pub. Laws (1929), c. 287.

[6] *27* N. C. B. A. Rep. 40.

lasted about ten weeks. The bad practices were so exposed that they practically ceased. But the final step was to call all the transgressors before the court on process and to compel them to show cause why they should not be permanently restrained from engaging in such practice.[7] This proceeding amounts to an injunction resembling those used against strikers to prevent damage to property and interference with employees, and one advantage in its use is to prevent delay and escapes in jury trials.

Last year several local bar associations in New York awoke to the situation and started an investigation. The Appellate Division of the Supreme Court granted their petition and directed a special term to conduct the investigation. Six months of investigation uncovered startling evils, such as coöperation between lawyers, runners, doctors, nurses, and policemen, and forging of releases. This resulted in a recommendation by the justice who conducted the investigation for disciplinary action by the Appellate Division in the case of seventy-four members of the bar.[8]

The Philadelphia Bar Association, taking advantage of the steps adopted in Milwaukee and New York, started a scientific investigation which resulted in uncovering a revolting ambulance-chasing situation.[9]

A scandal affecting any part of the bar is an injury to the bar of the entire state. The lawyers in small towns, where such evils as ambulance-chasing are unknown, are free from suspicion and should give support to their colleagues in large cities. Recent legislation in this state conferring power on the judge of the Superior Court to institute, in his discretion, an investigation of any reported cause for disbarment,[10] has opened the way for investigations similar to those referred to in other states. Also it is gratifying to note the recent activities of the Grievance Committees of the Mecklenburg and State Bar Associations in investigating charges of professional misconduct.[11] Proper coöperation in the bars and associations and a sense of brotherly responsibility will go a long way towards combating these ever-present evils.

There is an obvious need for exerting a guiding influence in the selection of judges. The capable lawyer and the one best fitted for

[7] 11 J. Am. Jud. Soc. 83.
[8] 12 J. Am. Jud. Soc. 36 and 101.
[9] 12 J. Am. Jud. Soc. 133 and 144.
[10] N. C. Pub. Laws (1929), c. 287.
[11] Raleigh *News & Observer,* October 1929.

judicial service is often practically excluded from candidacy under many of the systems in use at present. What bar associations, local and state, can accomplish in this respect has been demonstrated a number of times. A system that has proved its effectiveness is for the bar association to draft a list of eligible candidates. Such a list could be drawn up in various ways, but the best, perhaps, would be through a bar association primary. This method would serve every purpose of the association in putting forth its candidates. It would bring out the best talent, inform the electorate, and be of service to governors in making appointments. Capable lawyers would be honored by election to the list, and self-nominating politicians would be excluded. This plan contemplates that when a lawyer steps from the list into a campaign every member of the association will be obligated to support him regardless of party affiliation. The list will always be kept before the public, and politicians and governors, as well as the public, will come to assume that all judges are to be chosen from it.

At its annual meeting in 1921 the American Bar Association went on record as favoring the requirement that the legal education of every candidate for admission to the bar should consist of three years in a law school, which has, as a prerequisite for entrance, the completion of two years of college work.[12] In North Carolina an applicant must have studied law for two years, but there are no general educational requirements.[13] The North Carolina Bar Association has made some effort to have the North Carolina standards raised, especially as to general education, but without success.[14] Bills have been introduced in the Legislature and defeated by legislators who were not only college men but members of the Association. This, however, is probably due to the belief that the proper custodian of the power to determine the standards of admission is the court, which now exercises that power rather than the assembly. The President of the Association recently presented resolutions to the Supreme Court, asking that the standards be reviewed and revised, but the request has not been acted upon.[15]

Both efficient and inefficient lawyers are in active practice, and the uninformed client is unable to distinguish the one from the other.

[12] 46 A. B. A. Rep. 37.
[13] Rules of the Supreme Court, 192 N. C. 839.
[14] Coates, *Standards of the Bar* (1927), 6 N. C. L. Rev. 34.
[15] *Ibid.*

Whether he is served competently or incompetently is a matter of chance. Such a situation is unfair to the public and unfair to the bar. The reputation of all the members suffers from the incompetency of a minority. Action to correct these evils, to be effective, must be by the organized bar acting as a unit. The medical associations present a striking example of the effects produced upon the standards of a profession by organized bodies of its members conscious of their moral responsibility to the public. By a few years of steady pressure and education they produced in medical training and in legal requirements for admission to practice almost unparalleled improvements. The North Carolina Bar Association, with the coöperation of local associations, can produce like results in this state, if its members have a like willingness to recognize and to discharge the duty laid upon them. To produce this coöperation lawyers must become familiar with what is necessary to guard the approaches to the profession from persons unfit for membership.

Some steps have been taken in the direction of organized legal study by lawyers themselves through the local associations. In 1927 the younger lawyers of Greensboro organized the Barristers Club; the purpose being to encourage legal study.[16] Three years ago the younger lawyers of Charlotte organized a County Legal Research Club. This organization meets once a month and the programs consist of a written report by one attorney on a particular subject, and a prepared discussion of the subject by one or more others, followed by a full and informal discussion by all.[17]

Prior to its annual meeting, the American Bar Association distributes an advance program, a pamphlet of about three hundred pages, to its members. This program gives, in addition to a tentative program for the pending meeting and general information concerning it, announcements of meetings of committees, sections, and allied organizations. It also sets out all proposed amendments to the Constitution and By-Laws of the Association which are to be presented and acted upon at the forthcoming meeting. The section reports and the standing and special committee reports are complete and give full and careful reasons for proposals and recommendations. This pre-meeting information is of immense value to members attending the meeting. Snap judgments on a matter under consideration in a bar meeting are of little value. A member attending an American

[16] (1929) 7 N. C. L. Rev. 488.
[17] (1928) 6 N. C. L. Rev. 504.

Bar Association meeting can go prepared to discuss intelligently whatever questions have stimulated his interest. The same procedure might well be adopted by the state and local associations. Any matter worth proposing to the association is worth some serious thought and consideration beforehand on the part of members. The legislature, or legislative committee, will unquestionably give more serious consideration to a bill which is introduced by a bar association when it is known that the matter has been thoroughly thrashed out by the latter.

Similar to pre-meeting information, in making the bar association meetings more efficient, more valuable and more interesting to the individual members would be the organization of special sections; for example tax sections and title sections. These groups could take up and discuss at the state bar meetings matters in which the lawyers composing them are particularly interested. By dividing the usual meeting into sections members would be prompted to prepare special reports, and by attending the section meeting in which they are most interested would gain much practical and valuable information. Such system eliminates many of the slow and uninteresting aspects of association meetings. Each individual may obtain the desired information without the necessity of sitting through long and arduous discussions in which he has no interest or need. Each section is assured that its members are interested in the topic at hand. Indeed group organization affords an excellent clearing house for ideas. It is encouraging to note that the North Carolina Bar Association passed a constitutional amendment at its 1928 annual meeting authorizing the creation of sections.[18]

Numerous advantages could be derived from employing a full time secretary. The present highly efficient part time secretary is paid only $600.00 per year,[19] and necessarily of course, can devote only a comparatively small part of his time to this position. The American Bar Association pays its corps of officers and employees at headquarters' office total salaries of approximately $15,500.00 annually.[20] In order to accomplish much of the work attempted by the bar association there must be someone to lend continuity to the work and direct the campaigns and studies in a systematic manner. A full time secretary is almost indispensable if many of

[18] Constitution N. C. Bar Ass'n, Article 14.
[19] Report of the Treasurer, 30 N. C. B. A. Rep. 27.
[20] Report of the Treasurer, 53 A. B. A. Rep. 296.

the most important potentialities of the association are to be utilized. Through such a secretary members could keep in touch with the work that is being carried on and have a permanent fixed place to send in useful information, suggestions, and ideas for discussion in future meetings or to be furnished to other members of the organization. The secretary would be able to distribute the work of the association in a manner that would not cause impositions on any individual members and in this manner would secure more hearty coöperation from members and a higher standard of work, and would greatly increase the morale of the association. The question of increased financial cost would be only temporary. Members would be more than willing to pay the small increase necessary for the increase in useful and valuable work done by the association.

To sum up: the organized bar as a unit should realize the importance of discipline, the necessity of guarding its approach from those unfit for membership because of character or education, and the need for supervising the selection of judges. An efficient organization is an inducement for more lawyers to participate in the work. A direct relationship between the local associations and the state association, and a full-time secretary for the latter will increase the efficiency of both.

ALVIN T. WARD,
ODELL SAPP.

THE THIRTEENTH JUROR[1]

In each of our states there are numerous associations and committees, some composed wholly of lawyers, some of lawyers and laymen together, all earnestly working in the cause of law reform. These are supplemented by the efforts of national organizations. Why more rapid and definite progress is not made is a long story. But in a very real sense the procedural experiments and established legal improvements in each state afford lessons or examples for every other jurisdiction, and yet the benefits which should accrue from the opportunities thus afforded are often long delayed.

The "mistrial" in the Gastonia murder prosecution at Charlotte, N. C., in which sixteen defendants were charged with the assassination of Chief of Police Aderholt, because one of the jurors, after

[1] Reprinted from the New York *Times*, Sunday, September 15, 1929, with permission of the publisher. Edited by Current Events Committee of American Association of Legal Authors.

the trial had proceeded many days, became violently insane, illustrates the point. If, under the laws of North Carolina, the practice allowing an alternate juror had prevailed, the illness or incapacity of one member of the jury would not have interrupted the progress of the trial, as the substitute would immediately have taken the place of the regular juror who had become incapacitated. Instead of this, the many days consumed in the examination of 385 prospects that a jury of twelve might be selected, and the additional days consumed in the introduction of evidence before Judge Barnhill, all go for naught. It will now be more difficult than it was before to secure a jury at the special court term called by Governor Gardner for September 30, because of the increased publicity which the case has had and the prevailing legal theory that to secure a jury of complete impartiality for the trial of persons presumptively innocent, though charged with crime, it is essential that no tentative opinion concerning the guilt of the accused, founded upon newspaper articles, or gossip or rumor, shall have been formed.

Ohio is one of the states whose laws provide for an alternate or thirteenth juror, and when Dr. Snooks was placed on trial in Columbus for the murder of the 24-year-old college girl, he faced a jury of thirteen men—twelve regulars and one alternate.

To the alternate juror, where the practice prevails, the same oath is administered as to the regular members, the alternate's place in court is near the regular jury, with equal opportunity for seeing and hearing the proceedings and equal duty to obey the orders and admonitions of the court concerning the conduct of the jury. If the twelve regular jurymen get through the case without illness or incapacity, as is usual, the extra juror ceases to function, taking no part in the deliberations or the verdict.

To the rule that all law reforms must survive a determined challenge on constitutional grounds, the alternate or thirteenth juror innovation has been no exception. Such objections are not necessarily frivolous or perverse, and no citizen need be criticized for invoking the Constitution as the ultimate test for any law. In California, where the alternate juror practice prevails in civil as well as criminal trials, its constitutionality was contested in a celebrated criminal prosecution, involving the mysterious disappearance of Jacob Charles Denton of Los Angeles, followed by a charge of first-degree murder supported wholly by circumstantial evidence.[2]

[2] State v. Peete, 54 Cal. App. 333, 202 Pac. 51 (1921).