

JUDICIAL ORGANIZATION AND PROCEDURE

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The Self-Governing Bar. "In the large city of today, there are thousands of lawyers, but there is no bar."¹ With this remark, Roscoe Pound five years ago called attention to the situation which had resulted in the United States from the absence of a corporate profession equipped to administer discipline and govern itself. The presence in all communities of lawyers whose character or equipment rendered them unfit to practice had brought the entire profession into disrepute and had contributed largely to the encroachment of banks, trust companies, and other lay agencies upon the legal field.² Absence of adequate organization representative of the entire bar prevented the lawyers of the country from exerting effective influence and leadership in politics and government—a weakness which manifested itself particularly in attempts to obtain legislation designed to improve the administration of justice through procedural reform, court reorganization, or changes in substantive law. Leaders of the profession have time and again asserted that the United States is the only progressive nation in the world without an integrated, self-governing bar. "In no state," remarked James Bryce, "does there exist any body resembling the English Inns of Court, with the right of admitting to the practice of public advocacy and of exercising a disciplinary jurisdiction; and in few have any professional associations resembling the English Incorporated Law Society obtained statutory recognition. . . . Being virtually an open profession, like stockbroking or engineering, the profession has less of a distinctive character and corporate feeling than the barristers of England and France have, and perhaps less than the solicitors of England have."³

The Canadian Bar. In Canada, the bar has from the beginning been a self-governed and self-disciplined body. In 1797, the lawyers of Upper Canada (the present province of Ontario) were authorized by statute to organize themselves into a Law Society, which was incorporated in 1822. A similar organization now exists in every Canadian province, the western provinces having had some form of statutory organization from the time they were given autonomous government. The Law Society of Upper

¹ "The Crisis in American Law," *Harper's Magazine*, January, 1926, reprinted in 10 *Journal of the American Judicature Society*, 5.

² For a recent discussion, see Frederick C. Hicks and Elliott R. Katz, "The Practice of Law by Laymen and Lay Agencies," 41 *Yale Law Journal*, 69 (November, 1931).

³ *The American Commonwealth* (N.Y., 1911), Vol. II, p. 669.

Canada is governed by a representative body composed of thirty Benchers elected every five years by vote of the barristers in the province. Collectively, the Benchers form Convocation. Membership in the society is inclusive, every barrister and solicitor paying an annual fee to the organization and being subject to its discipline.⁴ Convocation fixes the standards of legal education, conducts examinations, and calls to the bar. A term of articulated clerkship is prescribed before admission is granted.⁵ The courts exercise no control whatever over admission to the bar or over discipline. "Starting with legal and adequate powers," the lawyers of Ontario "never permitted their bar to become spotted with ignorant or rascally members."⁶ As a result, it is said that Canadian lawyers are less given to sharp practices and breaches of professional honor than are their brothers in the States. There is no such demoralizing competition as often leads to an early loss of conscientious scruples on the part of the young practitioner in this country; hence members of the bar are more highly respected and the profession functions more effectively, particularly in the conduct of litigation and administration of justice.⁷

The Early American Bar. For a time, it seemed that in the United States also the English model might be followed in creating an integrated, autonomous, self-disciplined bar. In some of the seaboard states, there was an approach to a collegiate organization of lawyers. During the colonial period, legislative bodies, following the custom then prevailing in England, placed in the hands of the judges the function of admitting lawyers to practice in the local courts. In parts of New England, however, the judges permitted each county bar to exercise control over its own members. In Massachusetts, the Suffolk Bar, in 1771, adopted a regulation requiring that the consent of the bar should not be given to any young gentleman who did not have an education at college, or its equivalent in the judgment of the bar. In 1780, the same organization voted that no gentleman should take a student into his office for a less consideration than one hundred pounds sterling, and in 1783 that no lawyer should

⁴In Canada, the distinction between barristers and solicitors is no longer of particular significance; most lawyers belong to both classes and engage in the general practice of the law. Calling in special trial counsel is no more common than in the United States.

⁵The Law Society also maintains the law school at Osgoode Hall for training prospective members of the bar and appoints the principal, the lecturer, and the examiners.

⁶Editorial, "An American Bar in the Making," 10 *Jour. Am. Jud. Soc.*, 103. Also Herbert Harley, "Ontario Courts and Procedure," 12 *Mich. Law Rev.*, 447.

⁷In addition to the law societies, which are concerned solely with matters of a legal and business nature, there exist exclusive and voluntary bar associations, modeled after those in our states, to conduct general meetings and promote social relations.

in the future have more than three students in his office.⁸ In 1768, the Essex Bar adopted a rule, later adopted by other Massachusetts county bars, that no lawyer should take young gentlemen to study with him without the previous consent of the bar; that a lawyer should recommend no persons to admission as Inferior Court attorneys without three years' study with some barrister, no persons to admission as attorneys in the Superior Court who had not, also, been admitted at the Inferior Court at least two years; nor should he recommend persons to admission as barristers until they had been through the preceding degrees, and had been attorneys of the Superior Court for at least two years.⁹ In New Hampshire, a state bar association in 1788, and again in 1805, adopted elaborate "General Regulations for the Gentlemen of the Bar," prescribing, among other things, that no lawyer should receive more than three students in an office or receive any student without the consent of the county bar.¹⁰ Other states had similar restrictive provisions regarding admission, sometimes formulated by bar associations and sometimes prescribed by rules of court or by statute. Admission requirements had been somewhat lax in New York at an earlier period, but after 1770 as "the bar became more compact in its organization and assured of its power, it gradually established very rigid rules, fixing requirements for office study by students desiring admission as lawyers."¹¹ Such rules tended to establish the bar as more and more of an educated guild. This condition, however, was not destined to last long.

The existence of a self-perpetuating class of lawyers, enjoying special privileges, did not accord with the dominant political philosophy of the early half of the nineteenth century. As Mr. Alfred Z. Reed has said in his volume on legal education, "the attempted development of a virtually independent bar, under cover of this judicial control, was contrary to the spirit of our developing institutions."¹² In another passage, he states: "Democratic desire to keep the privileges of practicing law within the reach of the average man accordingly reinforced the natural tendency of a unitary state to keep governmental functions under its own control, and so prevented one feature of the traditional English system—that of a self-determining bar—from securing permanent lodgment in this country."¹³ This was particularly true in the states west of the mountains, where the democratic impulse was strongest. Control over admission of lawyers to practice passed from the bar to the

⁸ Charles Warren, *A History of the American Bar*, p. 200 (N.Y., 1913).

⁹ *Ibid.*, p. 196.

¹⁰ *Ibid.*, p. 200.

¹¹ *Ibid.*, p. 196.

¹² Alfred Z. Reed, *Training for the Public Profession of the Law*, p. 37 (Bulletin 15 of the Carnegie Foundation, 1921).

¹³ *Ibid.*, p. 28.

bench, and was exercised by such court or courts as the legislatures of the various states chose to designate. Hence, while the number of lawyers rapidly increased, there was no corporate profession with adequate powers of discipline and self-government.

A century ago, the close personal relationship of the lawyers with one another and with the bench served to maintain reasonably high standards in the profession. Even today, in rural communities, the same factors operate to restrain in some degree the less scrupulous members of the bar; but in the cities this condition does not exist. Attempts of the bench to govern the bar are largely unavailing. A large part of the lawyer's work is now done in his office or elsewhere outside of the court room, and the number of lawyers is so large that there is no possibility of effective control by the courts. On this point, Judge Clarence N. Goodwin of Chicago has said: "It has been my privilege to sit upon the bench both in the trial and appellate courts, and I know how impossible it is for those in that isolated position to exert any practical control over the actions of the thousands who constitute the bar. Naturally, the only effective action courts are able to take is upon information submitted to them, usually by the voluntary bar associations, and if we are frank with ourselves, we must admit that such efforts at bar government have been in the greater part a failure."¹⁴

Voluntary Bar Associations. A recognition of the low standards of professional conduct and a feeling of responsibility on the part of the more respectable practitioners led, during the latter part of the nineteenth century, to the organization of voluntary bar associations—national, state, and local. The first organization of the kind was started in New York City in 1870. Within a short time, the example was followed by Cleveland, Cincinnati, St. Louis, and Chicago. The first state bar association was organized in New Hampshire in 1873. By the summer of 1878, there were eight city and eight state associations in twelve states, with forms of organization patterned after that of the Bar Association of the City of New York.¹⁵ In 1916, there were forty-eight state and several hundred local bar associations. In many of them, particularly in the eastern states and cities, an effort was made to select members on the basis of moral fitness, but in others membership was open to all lawyers desiring to join and willing to pay dues. In 1915, it was estimated that the aggregate membership of all of the state associations was about 25,000, or twenty per cent of the total number of lawyers.¹⁶ A majority of the local associations were formed and maintained for the

¹⁴ Address delivered before the annual meeting of the New York State Bar Association, January 20, 1922, New York City, printed in 5 *Jour. Am. Jud. Soc.*, 181.

¹⁵ Alfred Z. Reed, *Training for the Public Profession of the Law*, p. 206.

¹⁶ *Am. Bar Assoc. Jour.* (October, 1915), p. 566.

promotion of social intercourse among lawyers and for the establishment and maintenance of law libraries, as well as for the restoration of ethical standards to the profession.

Those associations organized on a selective basis were fairly careful not to admit or retain in membership the unworthy elements in the profession, to the end that the younger lawyers might look upon affiliation with the groups as a badge of professional attainments and high moral character. In addition, they endeavored to keep watch on practitioners outside the fold by maintaining grievance committees, which succeeded in procuring the disbarment of some of the worst offenders. In urban areas, the city associations were able to accomplish more in the way of discipline than did the state organizations. The latter were primarily concerned with the more efficient administration of justice, and to this end sought to obtain appropriate legislation.

In spite of some substantial achievements to their credit, these voluntary bar associations proved disappointing to many professional leaders. By reason of clique control and the relatively small proportion of lawyers belonging to them, they could not be regarded as representative of the profession as a whole. Hence, such recommendations as they made to legislative bodies were usually regarded as emanating from a small and not particularly important group of practitioners, and for this reason received scant respect and attention. Nor were they more successful in their efforts to restore public confidence in the legal profession through enforcement of high standards of professional conduct. Lack of official status and a relatively small enrollment, comprising not more than a fourth of the profession, have stood in the way of effective disciplinary action.

Movement for Statutory Integration. The extremely slow progress being made by voluntary organizations in purging the profession of undesirable elements, and the failure of the bar to regain its lost leadership in public life, convinced some of the leaders of the profession that an inclusive professional organization should be effected by means of legislation. It was perhaps natural that one of the first proposals suggested the incorporation of existing state bar associations, with provision for inclusive membership. Accordingly, the American Judicature Society, in 1918, prepared and published a draft of a bar organization act¹⁷ providing for incorporation, with democratic control through a representative board of governors with large executive powers over admission to practice, discipline, and disbarment. Later, the Conference of Bar Association Delegates, at a meeting in Boston in 1919, appointed a commit-

¹⁷ Published in 2 *Jour. Am. Jud. Soc.*, 111.

tee on state bar organization, with Judge Goodwin as chairman. At the meeting of the Conference in St. Louis in August, 1920, this committee submitted a report¹⁸ in which it endorsed the creation of state bar organizations which should be inclusive of the entire bar and possess broad powers of admission and self-government, but disagreed with the proposal to incorporate existing bar associations. The committee entertained some doubt concerning the power of a legislature to compel a lawyer to become a member of such a corporation against his will. It further called attention to constitutional provisions in some states prohibiting the creation of corporations by special act. These difficulties led to an analysis of the legal situation, and as a result the committee came to the following conclusion: (1) members of the supreme court bar of a state are officers of the court and have a definite legal status as a part of the state government; (2) they are the advising and moving officers of the court, just as the judges are its deciding and decreeing officers; (3) the responsibilities of lawyers for their actions in court are the responsibilities of government officials, and not those of private citizens; (4) hence, what is needed is not the transforming of an existing state bar association into a corporation created by special statute, but legislative action providing for the organization and functioning of the state supreme court bar in legal recognition of the fact that the existing bar is a body politic and an integral part of the judicial machinery of the state. A model bar act, based on this analysis, was drafted by Judge Goodwin's committee and published in the *Journal of the American Judicature Society* for December, 1920.

By this time, the movement for statutory integration was making surprising headway in a number of states. In 1921, draft acts were approved by state bar associations in Ohio, Florida, and Michigan, and submitted by them to their several state legislatures. The Nebraska State Bar Association, at its conventions in 1920 and 1921, approved the principle of a state bar officially organized by legislative action, but declined to take favorable action on the draft submitted by its committee. In other states, proponents of the plan were organizing active campaigns. The most serious opposition was encountered in Illinois and New York. In the latter state, the important local associations in New York City, the Association of the Bar of the City of New York and the New York County Lawyers Association, were largely hostile. At a special meeting of the Conference of Bar Association Delegates in Washington in 1926, the chairman, Mr. Charles Evans Hughes, in his opening address,¹⁹ referring particularly to the opposition in New York,

¹⁸ *Ibid.*, p. 83.

¹⁹ Partially reported in 10 *Jour. Am. Jud. Soc.*, 13.

stated that the objections sprang from two fears: first, the fear that the plan would not work; and second, the fear that it would work. With reference to the first, he remarked: "It is said that you cannot overcome the inertia of a great number of lawyers who do not feel their responsibility. . . . You can't legislate into lawyers a sense of their duty. You can't compel them to recognize standards by making them members of a state bar organization." The second objection, he said, arose from a fear on the part of the local associations that the less respectable element of the bar, whom they considered unfit for equal participation, would gain control of an inclusive organization. They were fearful, moreover, lest their voluntary organizations, with their properties and other facilities, would be submerged and lose their identities in the larger movement. Only through these associations, they thought, could the gains already made be retained and further progress achieved.²⁰

However, if New York and the other states with large urban centers were reluctant to attempt statutory integration, there were other commonwealths that were willing to make the experiment. The first of these was North Dakota, where the state bar association, in 1921, submitted to the legislature a draft act providing for incorporation of the entire bar of the state, following as closely as possible the Canadian legislation on the subject. The legislature rejected this measure, but passed in its place a brief and simple act creating the Bar Association of the State of North Dakota, making all practicing lawyers members, and providing for organization and self-government, but not specifically giving any power over admission or discipline of members. Although the leaders of the integration movement would have preferred a more comprehensive measure, they were nevertheless delighted that one state at least had officially established a self-governing bar with inclusive membership.

Two years later, statutes were passed creating integrated bars in Idaho and Alabama. The Idaho act, however, was subsequently declared unconstitutional by the supreme court on the ground that, in conferring corporate powers on the board of commissioners elected by members of the state bar, it violated the constitutional injunction against the creation of corporations by special act.²¹ The majority of the court saw nothing to prevent the legislature from providing by general law for the voluntary incorporation of the Idaho state bar, but declared that the

²⁰ The controversy in New York gave rise to a series of articles in the *New York Law Review*. Julius Henry Cohen set forth the advantages of an all-inclusive bar in "The National Call for the Organization of the Bar," 4 *New York Law Review*, 81 (March, 1926) and 135 (April, 1926). William D. Guthrie set forth the disadvantages in "The Proposed Compulsory Incorporation of the Bar," *ibid.*, 179 (March, 1926), and 223 (April, 1926).

²¹ *Jackson v. Gallet*, 39 Idaho 382, 228 Pac. 1068.

state could not "force its bounty on private persons by incorporating them without their consent and against their will." If lawyers were to be singled out and incorporated by special act, the court could see no good reason why similar action could not be taken with reference to plumbers, carpenters, or members of any other trade or calling. The objections of the court, however, were overcome by an amended act passed in 1925 which recognized that the practice of the legal profession was a privilege granted by the state, and created an inclusive state bar for the purpose of protecting the public against "unprofessional, improper, and unauthorized practice of law and unprofessional conduct of members of the bar."²²

The New Mexico legislature passed a state bar act in 1925. In California, in the same year, a thoroughgoing and intensive campaign of several years' duration led to the approval of a proposed act by the state bar association and its passage by the state legislature. Success was temporarily postponed by Governor Richardson's veto, but the measure was again passed in 1927 and signed by Governor Young. Nevada in 1928 and Oklahoma in 1929 adopted state bar acts substantially the same as the California measure. A further advance was made in 1931, when Utah and South Dakota²³ were added to the list of states with self-governing bars. In the same year, state bar acts were passed by the legislatures of Arizona and Wyoming, only to meet with executive vetoes. It is anticipated that further efforts in both states will prove successful. In 1932, bar bills will be introduced in Kentucky, Virginia, and Mississippi. In 1933, it seems likely that Oregon, Washington, Michigan, Ohio, Texas, and possibly Minnesota, will be on the list.

Machinery of the Self-Governing Bar. All of the state bar acts except those in North Dakota and South Dakota provide in detail the governing machinery, together with the manner of electing officers, their number, qualifications, terms of office, powers, and duties. The act of North Dakota refers to a president and secretary-treasurer, having otherwise left the question of organization to be settled by the state bar association; the South Dakota act provides for a board of commissioners, also having left other details to the state bar. In the other seven states, each act creates a representative governing board, known as the board of governors, or the board of commissioners, of the state bar. The number of board

²² The constitutionality of the amended act was sustained in the case *In re Edwards*, 45 Idaho 676, 266 Pac. 665.

²³ The draft act approved by the South Dakota State Bar Association, and submitted to the legislature, closely resembled the California law, but it met with such strenuous opposition in the legislature that during the closing hours of the session there was introduced and passed a substitute measure similar to the skeleton organization law of North Dakota.

members varies from three in Idaho to twenty-one in Alabama. District representation is provided for, with judicial districts or circuits serving as geographical units, except in California, where governors are elected from congressional districts, and in Nevada and Idaho, where they are selected from districts formed of groups of counties. In both Oklahoma and California, there are also four members elected from the states at large. In Nevada, the term of office is one year, and in Oklahoma one year for district governors and four years for governors at large. In other states, provision is made for overlapping terms of three years, except in California, where the term is two years. Detailed provisions cover nominations by petition and voting by means of ballots sent through the mail. Governors or commissioners receive no compensation except mileage and expenses. In each state except Alabama, where the president is elected by the state bar at its annual meeting and need not be a member of the board, the president and vice-presidents are chosen by the board of governors from their own number; a secretary and treasurer, or secretary-treasurer, are also selected by the board, and ordinarily need not be members of the state bar. Provision is made also for the creation of committees, sometimes called local administrative committees, whose principal function is to conduct hearings in disciplinary matters, thereby supplanting the grievance committees of the voluntary associations.

Admission to Practice. From the beginning of our history, except for the early and comparatively short existence of inclusive self-governing bars in some sections along the Atlantic seaboard, our courts and legislatures have exercised complete control over admission to the practice of law and over the discipline of lawyers. As a rule, the legislatures have prescribed requirements and standards of admission and authorized the courts to admit applicants who have demonstrated their ability to comply with such standards and requirements. More recently, boards of bar examiners have been established in a majority of states with authority to conduct examinations and certify successful applicants to the courts for admission. While the various state bar acts have entrusted to the bar itself important functions in this connection, there has nowhere been a willingness on the part of legislatures to confer the same jurisdiction over admission which the Canadian law societies enjoy. The legislatures in some states have insisted on reserving the right to fix educational requirements, and in no instance has the state bar been authorized to admit to practice. At present, under the state bar acts, the governing boards are generally empowered to determine by rules the qualifications and requirements for admission, subject to approval by the supreme courts. In Alabama, however, educational qualifications and the subjects to be examined upon must be fixed by law. In Idaho and Utah, the gov-

erning boards are required by the state bar acts to conduct examinations; but elsewhere they are authorized to create and appoint examining committees for this purpose. In no state can the bar authorities do more than recommend candidates to the courts for admission.

Under the California act as originally passed, the board of governors was given power to determine qualifications for admission, subject to approval by the supreme court. But in 1929 this grant of power was eliminated by an amendment providing that any person over twenty-one years of age might apply for admission upon presentation of satisfactory testimonials of his good moral character, together with satisfactory proof that he had diligently and in good faith studied law for at least three years. Once more, the bar was "made safe for democracy." The supreme court, however, stepped into the breach, holding that certain code sections prescribing standards of admission prior to the passage of the bar act were still in effect. Furthermore, the court, while conceding the power of the legislature to prescribe the procedure to be followed in matters pertaining to admission, expressed the opinion that no legislative act would be valid which would "substantially impair the constitutional powers of the courts, or practically defeat their exercise."²⁴ This expression was in accord with a doctrine of relatively modern origin, based on the principle of separation of powers, to the effect that the power of admitting lawyers to practice is a part of the judicial power, in the exercise of which the courts cannot, under the state constitutions, be controlled by legislatures. The original bar act had required the supreme court's approval of rules regarding qualifications for admission, and the court regarded this as an indirect way of saying that the qualifications were fixed by the authority having power to make orders of admission. At most, the committee of bar examiners of the state bar was an effective aid to the court in the performance of its important function of admitting to practice, without which the work of sifting the increasing number of applicants could hardly be performed. But the court insisted on its power to admit an applicant even though he had been rejected by the bar examiners. However, notwithstanding that the action of the committee was merely recommendatory and not binding on the court, the latter would not exercise its power in contravention of the adverse recommendation of the committee unless a convincing showing was made by the applicant that the action had not been based on sound premises and valid reasoning.

Discipline. Except in North Dakota and South Dakota, all of the state bar acts confer rather broad powers of discipline on the state organizations. The governing boards are empowered to formulate rules of pro-

* *Brydonjack v. State Bar*, 208 Cal. 439, 281 Pac. 1018.

fessional conduct, subject to the approval of the supreme courts, and to take necessary steps for their enforcement. To this end, the governing boards are authorized to receive and investigate complaints, conduct hearings, and take appropriate disciplinary action by public or private reprimand, suspension, or disbarment. The boards, as well as local administrative committees, may administer oaths and compel the attendance of witnesses and the production of documentary evidence. In each act, rights of an accused member are safeguarded by provisions requiring reasonable notice, representation by counsel if desired, and compulsory attendance of witnesses on his behalf. Local administrative committees are commonly utilized to conduct hearings, make findings, and report to the governing boards. In Utah and Idaho, the bar acts expressly provide that the boards shall merely investigate and pass on complaints and thereafter report their findings and recommendations to the supreme courts for further action; and the supreme courts of Nevada and California have read a similar provision into the acts of their states. Under the acts of each of the other states, the governing board itself may take disciplinary action, subject in every case to the right of the accused to obtain a review in the supreme court.

In California, objections were urged to the exercise of disciplinary powers by the governing board, on the ground that the legislature had violated a constitutional provision designed to keep the three departments of government separate. By creating a tribunal with jurisdiction to hear and determine cases involving professional misconduct, the legislature, it was argued, had encroached on the domain reserved to the judiciary. In meeting this objection, the supreme court employed an ingenious bit of judicial construction. Although Section 26 of the act plainly gave the board of governors power to discipline members by reprimand, suspension, or disbarment, and provided for judicial review of its action, the supreme court held that the board was merely an intermediary agency created for taking evidence and reporting its findings to the court, and that its decision was purely "recommendatory." Disbarment or suspension could be effected only by an order of the supreme court. Hence, the board of governors was exercising neither judicial nor quasi-judicial functions.²⁵ The same reasoning was adopted by the supreme court of Nevada in a similar case.²⁶ The supreme court of New Mexico likewise declared that disbaring an attorney is a function reserved to the courts, and one which the legislature cannot confer on the governing board. Hence a lawyer was held not guilty of contempt for violating an order of the board disbaring him from practice.²⁷

²⁵ *In re Shattuck*, 208 Cal. 6, 279 Pac. 998.

²⁶ *In re Scott*, 292 Pac. 291.

²⁷ *In re Royall*, 33 N.M. 386, 268 Pac. 570.

But if final judgment is reserved to supreme courts, both as to admission and discipline, at least these tribunals are in sympathy with efforts to improve professional standards. As the state bars, by perfection of their machinery and conscientious and efficient discharge of their functions, entrench themselves in public favor, it seems almost certain that the courts' approval of bar rules and decisions will in nearly all cases be purely perfunctory.

Observations. It is too early as yet to pass final judgment on the self-governing bar in the United States. There is every indication, however, that it has won the support and confidence of a vast majority of lawyer-members. Control and leadership have been placed in capable hands. Fear of domination by the less respectable practitioners has not been realized. If, in the long run, it should become more and more difficult to enter the legal profession, at least the public is not likely to shed tears over an institution calculated to limit the number of lawyers.

Fear was expressed lest local bar associations would lose their identity, or perhaps pass out of existence under an official state bar régime. Fortunately, a test has been afforded in at least one state having large cities and strong local associations. Experience in California is enlightening. In Los Angeles, a very strong and active bar association has existed for many years. Relieved in large measure of the burdensome work of discipline, which is usually beyond the powers of such bodies, this organization is now in a better position to carry on its other work and is devoting itself in large part to social activities and to affording assistance to voters in nominating and electing approved candidates for judicial office.

There were some people, also, who feared that an inclusive bar would prove to be a flabby organization composed of discordant elements incapable of coördinated action. But there are indications that this type of organization is more influential than a voluntary bar association in obtaining legislative action. In 1931, the California legislature enacted without the slightest amendment a measure prepared and sponsored by the state bar, completely revising the corporation laws of the state. The actual work of revision was performed by a specialist in the field who was employed and paid by the organization. The old state bar association would almost certainly have been unable to carry out such a program. Lack of funds would have been a serious handicap—a substantial part of the annual income would have been required to pay the expense of preparing the draft. Compulsory payment of dues by every lawyer in the state, however, affords the official bar an income several times larger, and sufficient to finance its activities.

The work of reforming the legal profession through maintenance of high standards of admission and enforcement of adequate rules of pro-

essional conduct will obviously not effect any far-reaching changes in the space of a few years. In the meantime, these matters will no doubt occupy much time and attention; but in the long run the self-governing bar must justify itself principally as an effective means of meeting the public responsibilities of the profession. Coöperating with other public agencies, particularly the judicial council, it must labor for vitally necessary improvements in civil and criminal procedure and judicial organization and administration, and must assume large responsibility for needed changes in the substantive law. Proponents of the movement are heartened by the fact that in every country where the administration of justice has been strikingly improved, the autonomy and *esprit de corps* of the bar have been permanent underlying factors.

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The Federal Judicial Conference. The Conference held its ninth annual meeting in Washington on October 1-3, 1931.¹ Authorized by the Judiciary Act of September 14, 1922,² the conference of the senior circuit judges with the Chief Justice of the Supreme Court and the Attorney-General has become an established part of the judicial system of the United States. The reports of these conferences are to be found in the annual reports of the Attorney-General, beginning in 1924. The 1922 and 1923 reports may best be found in the *Texas Law Review*, Vol. II, pages 445 and 448, and in the *Journal of the American Judicature Society*, Vol. VIII, pages 85 and 92. In view of the general inaccessibility of the reports of the Attorney-General to the legal profession, it has been suggested that they be published in the Supreme Court Reports. The suggestion has not as yet, however, been adopted.

The annual gathering of the circuit judges, long desired by the late Chief Justice Taft,³ and by various bar associations, has added much to the knowledge of federal judicial statistics, and has gone far toward relieving congested dockets and overworked judges through recommendations to Congress and alterations in judicial administration. The seriousness with which it has attacked its work and the value of its recommendations to Congress have long since overcome the grotesque fears of those who urged that the "annual junket to Washington"⁴ would place the judiciary in a self-seeking position, cheapen the bench, result in propagandist campaigns, and break down the doctrine of checks and balances by making the judiciary a legislature.

¹ See *U. S. Daily*, Oct. 7, 1931.

² 42 Stat. 837, 838; Sec. 218, Title 28, U. S. Code.

³ 62 *Cong. Rec.*, 203.

⁴ Mr. Lea of California, 62 *Cong. Rec.*, 204.

In view of the difficulty of determining accurately in Congress the need of creating additional district and circuit judgeships, establishment of which was perennially urged by the Department of Justice and the bar associations, Congress ordered the Conference to gather statistics relative to the nature, accumulation, and disposal of business in the districts and circuits. Accordingly, beginning with 1923, the annual report has contained tabulations of cases pending, commenced, and terminated under the four categories of (1) civil cases to which the United States is a party, (2) criminal suits, (3) private suits, (4) bankruptcy proceedings. While, unfortunately, uniformity of statistics has been attained only in the last three reports, the figures presented with regard to the number of cases pending at the end of each judicial year point, to a certain extent, to the difficulties experienced by the courts in catching up with their dockets.⁵

The major labors of the Conference have been concerned with the discovery and consideration of means of facilitating justice, easing the burdens of overloaded judges, and developing the mechanics of procedure. Each conference has returned notation of congested district court dockets, and the 1931 report has been the first to state that the circuit courts are "well up" on their arrears.⁶ The charge made in Congress that the judicial statistics were inflated with "dead cases" and designed to give the appearance of need for more judges, whereas in reality no such need existed,⁷ is not entirely fair. However, while the conference has recommended the creation of additional district judges and the erection of a new circuit,⁸ it has met the charge with regard to dead cases by urging the judges to use their discretionary power to delete all cases not actively moved by counsel within one year.⁹ The Conference has looked with favor upon the transfer of district judges from one district to another within their circuits in order to relieve congestion.¹⁰ It has, however, frowned upon routing judges out of their own circuits to relieve tem-

⁵ The following will give an idea of the number of cases pending in the federal courts:

Type	1923	1924	1925	1926	1927	1928	1929	1930	1931
Civil	13,083	15,713	18,092	18,455	16,187	18,456	21,108	21,642	21,320
Criminal	67,173	63,943	46,725	38,858	35,246	31,500	31,353	27,895	35,849
Private .	40,193	40,319	38,525	38,368	38,370	39,351	37,503	36,776	37,151
Bankruptcy	57,338	59,208	59,959	Incomplete		58,870	58,802	66,423	61,410

⁶ *U. S. Daily*, Oct. 7, 1931.

⁷ 67 *Cong. Rec.*, 10946.

⁸ See report of 1928 conference, in Attorney-General's Report (1928), p. 4. Congress partially met this request. The 1930 conference urged the Attorney-General to make a thorough investigation of the entire judiciary and its work.

⁹ See 1926 report, p. 7. The 1927 meeting found 40.73 per cent of cases inactive.

¹⁰ See 1927 and 1928 reports.

porary situations in other circuits.¹¹ Each circuit judge has been urged to equalize and adjust the pressure within his own circuit.¹² In this connection, the 1931 conference recommended that annual conferences of the judges of each circuit be called by the senior circuit judge.¹³

The Judicial Conference has made certain requests to Congress designed to facilitate and expedite the work of the individual judges. It was reported that certain judges were not adequately supplied with necessary or complete law books and court reports. Accordingly, the 1923 session recommended that Congress set aside a small sum for the purchase and supply of such necessary tools.¹⁴ Provision for more adequate secretarial aid for judges, and the appointment of a law clerk for each circuit, were solicited.¹⁵ The 1928 conference advocated alteration of existing mail regulations to enable judges to send an unlimited number and weight of manuscripts through the mail without charge.¹⁶ Judges have been limited in the amount and weight of the matter which they may send free through the mails from the places where they are sitting to their homes or to other places where they hold court.

On the mechanics of court procedure, the conferences have made important suggestions to Congress. They have also wrought important improvements through the rule-making power, control of dockets, and the discretionary jurisdiction of the judges. Their efforts have been directed at eliminating loop-holes in procedure and stopping undue delays in litigation. Particular attention has been devoted to criminal, bankruptcy, and equity proceedings. The judges early noted a tendency to misuse the federal conspiracy statutes,¹⁷ causing delays and complexities through the introduction of parties and evidence from distant places. The 1927 conference urged judges to advance all writ of error and habeas corpus cases involving crime as rapidly and as far on calendars as circumstances would allow.¹⁸ Limiting the present influence of attorneys over the selection and empaneling of jurors has been suggested. In its place, a greater degree of control by the bench is being slowly inaugurated.¹⁹ Limitation of stays in mandamus to thirty days, pending appeal on *certiorari*, has been suggested with a view to speeding up the process of appeal and

¹¹ See 1931 report. Fears of a "flying squadron," "carpet bag," judiciary have been at rest. 62 *Cong. Rec.*, 204.

¹² Recommendations of 1931. *U. S. Daily*, Oct. 7, 1931.

¹³ Approved 1930, 1931. Adopted, though not ordered by law.

¹⁴ See 1925 report, pp. 7-8. Congress complied with the request.

¹⁵ Not yet provided for. Requested for the last four years.

¹⁶ See 1928 report, p. 4.

¹⁷ See 1925 report, p. 6.

¹⁸ See 1927 report, p. 7.

¹⁹ See 2 *Texas Law Rev.*, 449; *Kurczak v. U.S.*, 14 Fed. (2d) 109 (6th Cir.).

ending indeterminate escape of sentence.²⁰ Thorough examination of the possibility of more frequent waiver of grand jury has been ordered.²¹ Finally, change of prosecution of prohibition law offenders from the Treasury Department to the Department of Justice was urged by the Conference.²²

The judges in the Conference have taken a leading part in a movement for the reform of bankruptcy proceedings and laws. Study in coöperation with the American Bar Association and other organizations resulted in suggested amendments directed at dishonest bankruptcies.²³ In its 1924 report, the Conference urged revision of the federal statutes so that "all judgments, decrees, orders, and proceedings in bankruptcy shall be reviewed by appeal only, and that to be speedily taken."²⁴ Following requests by the Conference, the Attorney-General reported to the 1931 gathering that as yet the federal bankruptcy statutes fail to achieve their central purpose, permit exploitation of the courts, and require radical and general revision. The Conference accepted the report and is recommending to Congress such revision as will insure (1) more thorough examination of bankrupts, (2) more rapid liquidation and relief for wage-earners connected with the bankrupt, (3) appointment of more efficient trustees and adequate representation of creditors, and (4) a larger measure of summary procedure.²⁵

In conclusion, it may be said that the fears expressed in Congressional debate concerning the establishment of the Federal Judicial Conference have failed to materialize. The Conference has become a valuable asset, rendering easier and more intelligent the task of Congress in providing adequate judicial machinery for the United States. The annual "junket" to Washington is resulting in a steady elimination of the evils so deplored by those who opposed the creation of the Conference.

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²⁰ See 1927 report, p. 7. It is interesting to note the adoption of this rule by Judge Wilkerson in the Capone income tax evasion case. *N. Y. Times*, Oct. 25, 1931.

²¹ See 1931 report.

²² See 1924 report, p. 1.

²³ See 49 *Am. Bar Assoc. Reports*, 461. In 1925, the Supreme Court ordered several of these recommendations to be enforced. See 267 U.S. 613; 268 U.S. 709.

²⁴ See 1924 report, p. 1.

²⁵ Report for 1931. See also editorial on report of Solicitor-General Thacher regarding defects and proposals, *N. Y. Times*, Oct. 13, 1931.