THE IOWA STATE BAR ASSOCIATION AND LAW REFORM

I

HISTORY OF THE IOWA STATE BAR ASSOCIATION

The history of the Iowa State Bar Association extends over a period of fifty years. This half century comprises: the period of the Early Iowa State Bar Association, 1874–1881; an interregnum following the lapse of the Early Iowa State Bar Association, 1881–1895; and the life of the present Iowa State Bar Association, 1895–1926.

THE EARLY IOWA STATE BAR ASSOCIATION

The early Iowa State Bar Association was organized at Des Moines on May 27, 1874, at a meeting called by a committee of the Polk County Bar and attended by representatives from all parts of the State. A constitution was adopted, and pursuant to the report of the committee on permanent organization, the following persons were elected as the officers of the Association for the ensuing year: president, James Grant of Davenport; first vice president, C. H. Gatch of Des Moines; second vice president, O. P. Shiras of Dubuque; third vice president, W. A. Stowe of Hamburg; recording secretary, C. A. Clark of Webster City; corresponding secretary, Crom Bowen of Des Moines; treasurer, C. C. Nourse of Des Moines. An executive council composed of one member from each judicial district was also chosen as follows: first, R. H. Gilmore; second, H. H. Trimble; third, N. W. Rowell; fourth, W. L. Joy; fifth, E. Willard; sixth, J. C. Cook; seventh, J. N. Rogers; eighth,

W. G. Hammond; ninth, J. S. Woodward; tenth, John Stoneman; eleventh, W. J. Covil; twelfth, G. C. Wright; thirteenth, J. T. Hanna. The organization having been perfected, the Association adjourned.[1]

The subsequent meetings of the Association were all held at Des Moines on May 14, 1875, May 11-12, 1876, May 17-18, 1877, May 14-15-16, 1878, May 14-15, 1879, May 12-13-14, 1880, May 10-11, 1881. The presidents of the Association were: James Grant of Davenport, 1874-1875, 1875-1876; William G. Hammond of Iowa City, 1876-1877; H. H. Trimble of Bloomfield, 1877-1878; John N. Rogers of Davenport, 1878-1879, 1879-1880; George G. Wright of Des Moines, 1880-1881; and John F. Duncombe of Fort Dodge, 1881-1882.[2]

Addresses were made before the Early Iowa Bar Association by the following eminent persons: Judge T. M. Cooley, "Sources of Inspiration in Legal Pursuits", May 14, 1875; Judge J. M. Love, "The Progress and Development of the Common Law", May 12, 1876; Hon. E. H. Stiles, "The Relation Which the Law and Its Administration Sustain to General Literature", May 12, 1876; Dr. G. F. Magoun, President of Iowa College, "The Claims of the Legal Profession to General Respect in Civilized Society", May 17, 1877; Judge John F. Dillon, "Inns of Court and Westminster Hall", May 14, 1878; Justice Samuel F. Miller, "The Ideals of the Legal Profession", May 13, 1879; Judge George W. McCrary, "Professional Ethics", May 11, 1880; Judge J. M. Woolworth, "English Law as a Social Science", May 10, 1881.

These addresses are all reprinted in the volume, *Proceedings of the Early Iowa State Bar Association, 1874-1881,*

[1] *Proceedings of the Early Iowa State Bar Association, 1874–1881,* pp. 12–17.

[2] *Proceedings of the Early Iowa State Bar Association, 1874–1881,* pp. 18–87.

published by the Iowa State Bar Association in 1912. This volume was compiled by A. J. Small, Law Librarian of the State Library, to whom the credit for the initiation of the project is ascribed by the committee of the Iowa State Bar Association. Mr. Small's volume begins with the record of the first meeting in 1874 and continues the account of the early sessions down to 1881.[3]

Although a program had been arranged for a meeting in 1882, the Association did not meet. Several of the persons named on the program were unable to be present on the day set for the meeting, and for this and other reasons the meeting was postponed indefinitely. It was thought that "upon the success of the next meeting will depend the life of the association", and "that unless a more general interest is manifested by the profession many of the present members will abandon further effort to maintain an organization." As there is no further record, evidently no other meetings were held and the first Iowa State Bar Association ceased to exist.[4]

Although limited to a comparatively brief existence, the Early Iowa Bar Association is held in grateful esteem. It stimulated the demand for ethical advancement in the profession and for promotion of the spirit of public service. It opened to view the opportunity of the Association for the promotion of a valuable professional literature in the addresses delivered before it. It brought to pass the early elevation of the standards for admission to the practice of law. Indeed, its one work of law reform justified its existence — the securing of the statute extending the time of study for and regulating admission to the bar. Prior to its

3 *Proceedings of the Early Iowa State Bar Association, 1874–1881*, pp. 6, 18–88, 91–246; *Proceedings of the Iowa State Bar Association*, Vol. XVII (1911), pp. 17, 18, Vol. XVIII (1912), pp. 36, 37, Vol. XIX (1913), pp. 64, 65.

4 *Proceedings of the Early Iowa State Bar Association, 1874–1881*, p. 88.

adoption, admissions to the bar were made on motion in all of the district and circuit courts of the State.[5]

The Association was not revived for a period of fourteen years after its last annual meeting, but during this time the work of the Early Bar Association was gradually more and more appreciated, and the need for a professional association became increasingly apparent to the lawyers of Iowa.

THE IOWA STATE BAR ASSOCIATION

The Iowa State Bar Association was organized at a mass meeting of lawyers of Iowa in the Capitol at Des Moines, on December 27, 1894. This meeting was held pursuant to a call dated December 1, 1894, signed by twenty-two leaders of the bar in Iowa, and sent to the bar of every county in the State. It suggested the organization of a State Bar Association, "or the revival of the old one." Hon. Emlin McClain, of Iowa City, was chosen temporary chairman and James W. Bollinger, of Davenport, was the temporary secretary of the organization meeting. An organization was perfected under a plan reported by a committee of five appointed for this purpose and a constitution was adopted. The permanent organization having been effected, the following officers for the Association were elected: president, A. J. McCrary of Keokuk; vice president, L. G. Kinne of Des Moines; secretary, James Bollinger of Davenport; treasurer, John N. Baldwin of Council Bluffs. An executive committee composed of one member from each congressional district was chosen as follows: first, E. S. Huston of Burlington; second, M. J. Wade of Iowa City; third, C. E. Pickett of Waterloo; fourth, J. R.

[5] *Proceedings of the Early Iowa State Bar Association, 1874–1881*, pp. 42–44, 46–49, 60, 76, 77; *Proceedings of the Iowa State Bar Association*, Vol. VII (1901), pp. 29, 30, 72, Vol. XXX (1924), pp. 197, 198; *Laws of Iowa*, 1884, Ch. 168.

Bane of New Hampton; fifth, D. E. Voris of Marion; sixth, L. C. Blanchard of Oskaloosa; seventh, James G. Day of Des Moines; eighth, L. C. Mechem of Centerville; ninth, E. W. Weeks of Guthrie Center; tenth, D. C. Chase of Webster City; eleventh, C. L. Wright of Sioux City.[6]

It is indicative of the interest of Iowa lawyers in law revision and reform that a special judicial committee was appointed at this organization meeting to consider and make recommendations to the Code Commission. This special judicial committee consisted of E. S. Huston of Burlington, Carroll Wright of Des Moines, George W. Seevers of Oskaloosa, P. L. Sever of Stuart, and A. P. McGuirk of Davenport.[7]

Since its reorganization the Iowa State Bar Association has convened annually, and has grown from a membership of 163 in June, 1895, to a membership of 1566 in June, 1925. The Association has held annual meetings in the following cities: Des Moines, 1895, 1903, 1905, 1906, 1910, 1918, and 1924; Davenport, 1896, 1907, 1919 (and to be in 1926); Cedar Rapids, 1897, 1912, and 1920; Mason City, 1898 and 1923; Sioux City, 1899, 1913, and 1922; Iowa City, 1900; Council Bluffs, 1901 and 1917; Dubuque, 1902, 1916, and 1925; Ottumwa, 1904; Waterloo, 1908 and 1921; Marshalltown, 1909; Oskaloosa, 1911; Burlington, 1914; and Fort Dodge, 1915.[8]

The names of the presidents of the Association comprise the following list: 1895, A. J. McCrary of Keokuk; 1896, L. G. Kinne of Des Moines; 1897, J. H. Henderson of Indianola; 1898, M. J. Wade of Iowa City; 1899, James O. Crosby of Garnavillo; 1900, L. C. Blanchard of Oska-

[6] *Proceedings of the Iowa State Bar Association*, Vol. IV (1898), pp. 3–5.

[7] *Proceedings of the Iowa State Bar Association*, Vol. IV (1898), p. 6.

[8] *Proceedings of the Iowa State Bar Association*, Vols. I–XXX (1895–1924), Vol. XXXI (1925), pp. 70, 211.

loosa; 1901, J. J. McCarthy of Dubuque; 1902, J. H. McConlogue of Mason City; 1903, Robert M. Haines of Grinnell; 1904, George W. Wakefield of Sioux City; 1905, A. E. Swisher of Iowa City; 1906, Wm. H. Baily of Des Moines; 1907, H. M. Towner of Corning; 1908, D. D. Murphy of Elkader; 1909, James W. Bollinger of Davenport; 1910, Charles M. Harl of Council Bluffs; 1911, J. L. Carney of Marshalltown; 1912, C. G. Saunders of Council Bluffs; 1913, H. E. Deemer of Red Oak; 1914, John F. Lacey of Oskaloosa; 1915, F. F. Dawley of Cedar Rapids; 1916, A. N. Hobson of West Union; 1917, Wm. McNett of Ottumwa; 1918, Charles W. Mullan of Waterloo; 1919, Henry L. Adams of Des Moines; 1920, Emmet Tinley of Council Bluffs; 1921, Charles M. Dutcher of Iowa City; 1922, Jesse A. Miller of Des Moines; 1923, James A. Devitt of Oskaloosa; 1924, Truman S. Stevens of Hamburg; 1925, A. Hollingsworth of Keokuk; 1926, J. E. E. Markley of Mason City.[9]

The names of the secretaries of the Association, upon whom has fallen the responsibility for the records and the publication of the annual volume of proceedings are given in the following list: 1895-1896, James W. Bollinger of Davenport; 1897–1899, Nathan E. Coffin of Des Moines; 1899–1905, Sam S. Wright of Tipton; 1906–1911, Charles M. Dutcher of Iowa City; 1912–1918 and 1919–1923, as secretary-treasurer, H. C. Horack of Iowa City; 1924–1926, as secretary-treasurer, Clyde H. Doolittle of Manchester,[10] now of Des Moines.

The constitution of the Association states the purpose of the organization: "To elevate the science of jurispru-

[9] *Proceedings of the Iowa State Bar Association*, Vols. I–XXXI (1895–1925).

[10] *Proceedings of the Iowa State Bar Association*, Vols. I–XXXI (1895–1925). For a list of the present officers see the *Proceedings of the Iowa State Bar Association*, Vol. XXXI (1925), p. 208.

dence, to promote reform in the law, to facilitate the administration of justice and equity, to elevate the standard of integrity, honor and courtesy in the legal profession, to encourage a thorough and liberal education for the law and to cherish a spirit of brotherhood among the members thereof."[11]

The annual addresses by distinguished jurists, lawyers, and judges, one of which is a special feature of each annual program of the Association, are published in full in the annual proceedings. The list of these annual addresses is as follows: 1895, L. G. Kinne, "How the Supreme Court Disposes of Cases"; 1896, John Barton Payne, "The Legal Profession: Its Opportunities and Obligations"; 1897, John Gibbons, "Security Under the Law Is the Shaft and Shield of the Republic"; 1899, J. H. McConlogue, "The American Lawyer; His Obligations and Opportunities"; 1900, John L. Webster, "Has the United States a Duty and a Destiny to Fulfill in China?"; 1901, Smith McPherson, "The Recent Insular Tariff Decisions by the Supreme Court of the United States"; 1902, Paul E. Carpenter, "Some of the Legal Phases of Insanity"; 1903, David J. Brewer, "The Triumph of Justice"; 1905, Emlin McClain, "Limitations on Federal Power in the Government of Territories"; 1906, John Campbell, "Freedom of the Executive in Exercising Governmental Functions from Control by the Judiciary"; 1907, Hannis Taylor, "The Science of Jurisprudence"; 1908, George R. Peck, "The March of the Constitution"; 1909, John H. Wigmore, "The Science of Criminology — Rules of Evidence in Criminal Cases"; 1910, C. S. Thomas, "Justice Delayed Is Justice Denied"; 1911, John Burke, "Employers' Liability and Workingmen's Compensation Acts"; 1912, William Ren-

11 *Proceedings of the Iowa State Bar Association*, Vol. IV (1898), p. 12, Vol. XXXI (1925), p. 211.

wick Riddell, "Comparison of the Constitution of the United States and Canada"; 1913, Emory Speer, "Americanism and American Judges"; 1914, Roscoe Pound, "The Judicial Office in the United States"; 1915, Charles B. Elliott, "The Lawyer as a Craftsman"; 1916, James G. Johnson, "Our Citizenship and Our Jurisprudence"; 1917, Burton Hanson, "Benjamin Franklin"; 1918, Rome G. Brown, "The Disloyalty of Socialism"; 1919, Samuel J. Graham, "The Legal Profession as Related to Government"; 1920, Harry Olson, "Court Organization, Procedure, and the Psychopathic Laboratory"; 1921, C. S. Thomas, "Lawyers and Legislation"; 1922, Cordenio A. Severance, "The Constitution and the Courts"; 1923, Jas. Hamilton Lewis, "America as Author of New International Law"; 1924, James H. Wilkerson, "The American Bar — The Nation's Great Conservative Force"; 1925, James A. Reed, "Centralization, National and International".[12]

Each year several papers are read before the Association, usually by well-known lawyers and judges of Iowa. These papers are also published in the annual proceedings.[13] In addition to this body of professional literature the annual proceedings contain the addresses and toasts delivered at the annual bar banquets, embodying the wit and humor of the festive board as well as the more serious wisdom and philosophy of the law. In fact the time has come when to own a set of the *Proceedings of the Iowa State Bar Association* is to possess a veritable treasury of the literature of the law and its practice.

The Association functions in its several activities with the aid of an elaborate system of standing committees, the

[12] *Proceedings of the Iowa State Bar Association*, Vol. XXXI (1925), pp. 227, 228.

[13] *Proceedings of the Iowa State Bar Association*, Vol. XXXI (1925), pp. 229–233.

members of which are appointed annually by the president. The limits of space preclude an extended description of this admirable committee system, but mention may be made in passing of the Committees on Law Reform, on Legal Education and Admission to the Bar, on Legal Biography, on Professional Ethics, on Uniform State Laws, on Taxation, on Legislation, and on Code Revision. The designations of these committees are suggestive of their many varied activities.[14]

II

THE RESPONSIBILITY OF THE BAR

The purpose of this paper is to make a study of the spirit and progress of the Iowa Bar toward public movements and law reform as revealed by the action of the one organization of potential influence among lawyers, the Iowa State Bar Association.

A LAWYER'S VIEW

The responsibility of the bar in respect to these matters was discussed by Hon. Wm. McNett, of Ottumwa, in an address of welcome to the State Bar Association in 1904, in which he said:

> It is our fortune to be living in an age of marvelous development, and of rapid and far reaching changes in the social order, and in all these movements the judiciary and the profession necessarily perform a most important part.
>
> We cannot escape our share of the responsibility in shaping and giving proper direction to these new forces, if we would, and we should not if we could . . . .
>
> The position of the lawyer in a free state, as the preserver alike of freedom and order, has perhaps never been expressed with more

[14] *Proceedings of the Iowa State Bar Association,* Vol. XXXI (1925), pp. 212, 217, 219, 220.

felicity than in these noble words of the great lawyer and forensic orator, Rufus Choate:

"It may be said, I think, with some truth of the profession of the Bar, that in all political systems and in all times it has seemed to possess a two fold nature; that it has seemed to be fired by the spirit of liberty, and yet to hold fast the sentiments of order and reverence, and the duty of subordination; that it has resisted despotism and yet taught obedience; that it has recognized and vindicated the rights of man, and yet has reckoned it always among the most sacred and most precious of those rights, to be shielded and led by the divine nature and immortal reason of law; that it appreciates social progression and contributes to it, and ranks it in the classes and with the agents of progression, yet evermore, counsels and courts permanence and conservatism and rest; that it loves light better than darkness, and yet like the eccentric or wise man in the old historian, has a habit of looking away as the night wanes, to the Western sky, to detect there the first streak of returning dawn."[15]

A LAYMAN'S VIEW

President Homer H. Seerley, of the Iowa State Teachers' College, in an address before the Iowa State Bar Association, entitled "The Layman's View of the Lawyer", expressed some pertinent thoughts on law-making and the influence of the lawyer in the following words:

The American people are great lawmakers. They are like that notable assembly on Mars Hill which diligently sought to know the new things, in that they constantly endeavor to seek out the making of new laws. The American people believe, or act as if they believe, that civilization is determined by the acts of legislatures and the enforcement of said statutes by the courts. They seem to forget that the enactment and the revision of laws never yet made civilization. Laws are but the expression of the standards adopted formally by civilization. Laws that are before their time, and that are unnecessary to the welfare of the people, may even be the preliminary suggestion that starts among a people evils that teach

[15] *Proceedings of the Iowa State Bar Association*, Vol. X (1904), pp. 23, 24.

insubordination and crime, evils that break down the bulwarks of civilization. Progress among men must come before law. Righteousness must be obeyed by the majority before enactments are effective. There is much to be done before laws are needed. The work of educating and training a people is preparatory to legislation, as there must be majorities in a republic that are active and reliable before any community can be trusted to accept the supremacy of law.

Schools, churches, homes, social influences, newspapers, libraries, workers of all kinds who seek first the civilization of individual men in the establishment of righteousness, are the cornerstones of a civilization whose law making and justice are supreme. For this reason the system of public education in its work with the people must always receive important consideration. For this reason the training of the teachers for the common schools is entitled to a large place in the thoughts and in the effort of the present age. For this reason the greatest opportunities should be opened and the greatest support and sympathy should be given to those who stand at the teacher's desk and labor for a better civilization. For this reason there should be more and more done for prevention in order that there may be less and less done for cure and for punishment.

No class of citizens in this country are able to do as much, indirectly and directly, for these great agencies as is able to be done by the members of the bar. Their vantage ground gives them chances to know and see the facts, their capabilities as individuals are beyond the ordinary, and they are thus able to accomplish; their prosperity gives them large efficiency, and their influences for the right things are immeasurable by the common standards; their advice and leadership is sought on every hand, giving them daily opportunities that other vocations never possess. If the members of the bar of the state and the nation were to unite on those great issues of civilization, if they were willing to do all they can to the insuring of the progress in enlightenment and righteousness, the day of a greater people for America and for the world at large would come, progress would be a certainty, righteousness would prevail, and the greatest and most lasting civilization in history would be a fact.[16]

[16] *Proceedings of the Iowa State Bar Association,* Vol. XI (1905), pp. 86, 89, 90.

III

THE BAR IN PUBLIC MOVEMENTS

ARBITRATION AND WAR

During the thirty years history of the reorganized Iowa State Bar Association, many public movements have passed upon the scene of world activities. The interest taken by the Bar in some of these great movements is shown in the action of the Association. The Association, without dissent, adopted the resolution approving the settlement of national controversies by an International Board of Arbitration and recommending, in accordance with the request of the New York Bar Association, that a committee of the Iowa Association be appointed to act with like committees of other State Bar Associations in securing needed provisions and tribunals for the peaceful settlement of international controversies.[17]

In 1917 the Iowa State Bar Association by a unanimous vote adopted the resolution pledging to the President of the United States "its unqualified support of every act which may be done, and every measure which may be taken, to maintain the principles of democracy upon which our Government is founded, and to gain a victory for such principles in the war that has been forced upon this nation by the Imperial Government of Germany". This resolution was telegraphed to President Wilson and a courteous reply of appreciation was returned by him to the president of the Iowa Bar Association. Furthermore, before adjournment, the Association adopted among others the resolution: "we recognize the national crisis that confronts us and the peculiar obligation that rests upon the members

[17] *Proceedings of the Iowa State Bar Association*, Vol. II (1896), pp. 129, 131, 132.

of the legal profession to emphasize the duty of our citizenship and to stand loyally by the Government of this Nation in its hour of need, and we here and now pledge to this Nation the loyal and unstinted support of the members of this Association to the end that at all times and under all circumstances the Government shall be sustained before the people in its efforts to restore world peace, and to establish beyond the reach of successful assault the principles of free government.''[18]

These resolutions were followed by other concrete expressions of the spirit of service. The dues of members in the military or naval service of the United States were remitted by the Association during the period of the war. A committee was appointed to devise a plan to look after lawyer-soldiers' clients. A ''Resolution Concerning Military Service'' was adopted, providing ''that we strongly recommend to the several local Bar Associations of Iowa that such local Bar Associations arrange to care for the business of its fellow members of the Bar who serve their country during the war by entering any branch of the military service; that the fees thus earned or a substantial part thereof be given to such member or his family; that, in so far as possible, his clients be preserved to him and, if need be, substantial aid be otherwise rendered such member or his family''.[19]

By resolution of the Association it was declared to be the duty of a lawyer to render all service in relation to war registrants and their classification without compensation or charge, as simply meeting the duty of a patriotic citizen. The Association adopted a plan for a committee to organ-

[18] *Proceedings of the Iowa State Bar Association*, Vol XXIII (1917), pp. 158, 231.

[19] *Proceedings of the Iowa State Bar Association*, Vol. XXIII (1917), pp. 160, 187, 232.

ize the State and select a lawyer in each county for war purposes and for the benefit of relatives of soldiers in service. At the meeting held during the second year of the war the Association by resolution again recognized the war obligation resting upon the members of the legal profession, renewed its pledge of loyalty to the nation, and denounced ill-advised peace propaganda.[20]

At the Association meeting in 1919 the war services of the Bar were recounted in the following quotation from the report of the Committee on Legal Ethics:

> Your committee is proud to report that members of the Bar of Iowa have kept their pledges contained in the resolutions adopted at the meetings held in 1917 and 1918 . . . . In every field of patriotic activity the Iowa Bar was present discharging its obligation. They have kept their faith. We report that the duty has been performed. There is honor enough for all. The lustre of the Bar has not been dimmed and we now return to our ways of peace fully conscious of the fact that our duty has been discharged.
>
> Some of our brethren are not here today. The stars upon their service flags have turned to gold. They sleep in the soil of France with their comrades who fell by their side. . . . We salute the dead and point to their sacrifices as an inspiration for those who shall come after us and follow the ways of our honorable profession.[21]

FEDERAL SUFFRAGE AMENDMENT

In 1918 the Association took action on behalf of the constitutional suffrage amendment then pending before the Senate of the United States. Upon request by telegram from the presidents of the Iowa Equal Suffrage Association and the Iowa Federation of Women's Clubs and the chairman of the Women's Committee Council of National

[20] *Proceedings of the Iowa State Bar Association,* Vol. XXIV (1918), pp. 146–149, 207, 208.

[21] *Proceedings of the Iowa State Bar Association,* Vol. XXV (1919), pp. 129–133.

Defense that the Association telegraph the Senate requesting it to pass the amendment, a committee was appointed for the purpose and a telegram was sent to Senator A. B. Cummins, the senior Senator from Iowa, conveying a resolution of the Iowa State Bar Association, urging "upon the Senate of the United States favorable action on the proposed amendment to the Constitution granting equal suffrage".[22]

CONSERVATIVE GOVERNMENT

In 1920 a significant address was delivered before the Association by its president, Emmet Tinley, upon the subject, "Government and Its Menace". Mr. Tinley deplored the paternalistic rôle of government as exemplified in the Non Partisan League experiment in North Dakota. He said:

> Surely no true conception of government will tolerate the paternalistic theory of a direct participation in the usual and ordinary activities of man. I see no particular occasion for alarm in the governmental regulation and even control of the habits, personal and business practices, appetites and passions of men, but I do contend that the government abandons its sovereignty and assumes the status of a citizen when it attempts to engage in the activities of the citizen . . . . There are personal liberties and rights of persons and rights of property that cannot be invaded by the government. Without these liberties and without these rights, democracy vanishes and autocracy reigns . . . . the real menace to our government lies in its failure to exercise fully and intelligently the powers given to it by the Constitution and in the assumption of powers not granted by the Constitution and which violate the natural rights of man.

At the close of this address the Bar Association unanimously adopted a motion, "That the Association approves

22 *Proceedings of the Iowa State Bar Association*, Vol. XXIV (1918), pp. 148, 206.

and adopts the political philosophy advanced by our President in this Address as the sense and spirit of this meeting.''[23]

In 1923 a paper entitled ''Render Unto Business the Things That Pertain to Business, and Unto Government the Things That Pertain to Government'', was presented before the Association by Hon. Burton E. Sweet, of Waverly. Mr. Sweet urged the fundamental necessity of the separation of government from the sphere of business. He closed with the admonition, ''Let us take a position that is in harmony with the orderly administration of justice and in accordance with the principles set forth in the Declaration of Independence and the Constitution of the United States as interpreted by the Fathers.'' Upon the conclusion of his presentation of this paper, a motion was unanimously adopted ordering that it be printed and distributed at the expense of the Association. The Association unanimously adopted resolutions protesting against false and unfounded attacks upon the Federal Supreme Court and its decisions and denouncing as inimical persons all those thus seeking to mislead the minds of the people. In 1925 Senator James A. Reed of Missouri was given a vote of thanks of the Association for his ''splendid American address on Centralization, National and International'', and it was unanimously ordered that it be printed in the proceedings.[24]

AMERICAN CITIZENSHIP EDUCATION

During the period since the World War, the American Bar Association and the Bar Associations of the several

[23] *Proceedings of the Iowa State Bar Association*, Vol. XXVI (1920), pp. 186–205.

[24] *Proceedings of the Iowa State Bar Association*, Vol. XXVIII (1922), pp. 230, 231, Vol. XXIX (1923), pp. 213–223, Vol. XXXI (1925), pp. 193–207.

States, in common with the American Legion and other patriotic agencies, have been active in promoting the principles of American citizenship and education in government. The question of the teaching of the Constitution has especially stimulated action in the State Bar Associations. The Iowa Bar Association in 1923 unanimously adopted a resolution creating a standing Committee on American Citizenship. The duties of this committee are to devise means of having the Constitution of the United States, the Constitution of the State of Iowa, and the ideals of good citizenship properly taught in every school, college, and university in the State, to establish a speakers' bureau from the membership for service in the promotion of public education in good citizenship and in the nature and ideals of our government, and to coöperate with newspapers, local bar associations, and the American Bar Association in the promotion of education in American citizenship. An appropriation not exceeding one thousand dollars annually from the funds of the Iowa State Bar Association was authorized for the purposes of carrying on the work of this committee. Resolutions were unanimously adopted in 1922 and 1923 defending the Supreme Court of the United States against the unjust criticisms and ill-advised proposals for limiting its powers and judgments on constitutional questions, and further expressing profound confidence in the courage, fidelity, and patriotism of the members in their maintenance of the highest ideals and traditions of that tribunal.[25]

The American and State Bar Associations, the American Legion, the National Security League, and the American Political Science Association have been interested in the promotion of laws requiring the teaching of the Con-

[25] *Proceedings of the Iowa State Bar Association*, Vol. XXVIII (1922), pp. 230, 231, Vol. XXIX (1923), pp. 193, 197, 199, 200.

stitutions of the United States and of the several States. In 1921 the legislature of Iowa enacted a law requiring such instruction, and in 1924 adopted an amendment prescribing examination in the fundamental principles of a republican form of government and the Constitution of the United States and of the State of Iowa as conditions for the issuance of teachers' certificates. The Iowa Bar Association in session in 1924 unanimously adopted a resolution asking the Iowa State Board of Education "to make provision in the University of Iowa, the Iowa College of Agriculture and Mechanic Arts, and in the Iowa State Teachers' College, for a regular course of study of at least nine weeks, of 'American Citizenship and the Constitution.'" The resolution further requested "that such course be also adopted in all other colleges, public or private, in the State of Iowa." At the same time the Association extended the duties of the Committee on American Citizenship and continued the appropriation which had been made in 1923 and not used.[26]

TEMPLE OF JUSTICE

In 1914 a movement began in behalf of the erection of a Judiciary Building by the State. The proposal originated in the report of the Association's librarian, A. J. Small, showing the necessity for fireproof housing for the State Law Library, of which he had charge. Justice Horace E. Deemer of the Supreme Court was among those interested in this recommendation, and he was appointed chairman of a special committee to continue the presentation of the matter. Justice Deemer presented the report of the committee to the Association in 1915, showing the fire hazard to the State Law Library and the need of additional space

[26] *Proceedings of the Iowa State Bar Association*, Vol. XXX (1924), pp. 110–114; *Laws of Iowa*, 1919, Ch. 406, 1921, Ch. 91; *Code of 1924*, Sec. 3862.

for the Supreme Court. The State Law Library was then valued at from a half to three quarters of a million dollars. A Committee on the Judiciary Building, consisting of one member from each congressional district, was selected. Justice Deemer again reported for the committee in behalf of a Judiciary Building in 1916, and the committee was continued by a unanimous vote.[27]

In 1917 Librarian A. J. Small commended the committee on its efforts to secure the erection of a Judiciary Building, a bill for the project having been passed by the Senate although it failed in the House. Justice Deemer died in February, 1917, and the report of the committee in 1917 was presented by Senator J. L. Carney. The committee was continued for the ensuing year and until the meeting of the next session of the legislature. In 1918 the report of Librarian A. J. Small to the Association again referred to the necessity for a Judiciary Building, or Temple of Justice. In 1922 Librarian Small's report suggested the appointment of a committee to represent the Association before the legislature and to endeavor to secure an adequate appropriation for the project.[28]

The Librarian's report to the Association in 1924 related the history of the movement for the Temple of Justice, showing that it had progressed so far as to have secured by legislative act in 1919 an appropriation of $750,000. The appropriation, however, proved insufficient, and the Thirty-ninth General Assembly loaned the fund to the State Treasury. In 1923 the funds originally appropriated for the Temple of Justice were turned back to the general fund

[27] *Proceedings of the Iowa State Bar Association*, Vol. XX (1914), pp. 162–167, Vol. XXI (1915), pp. 90, 91, 117–121, 123, 163, 164, Vol. XXII (1916), pp. 167–170.

[28] *Proceedings of the Iowa State Bar Association*, Vol. XXIII (1917), pp. 46, 154–157, Vol. XXIV (1918), pp. 208, 209, Vol. XXVII (1921), p. 20, Vol. XXVIII (1922), pp. 156, 157.

of the State and the plans were placed in the hands of the Executive Council. Mr. Small urged continued aggressive action for the project of a Temple of Justice.[29]

LAW REFORM COMMISSION

At its 1924 meeting the Iowa Bar Association declared itself in favor of an extensive investigation in the movement relating to the matter of law reform. A proposal was presented by the Committee on Law Reform embodying "a recommendation which might be said to be revolutionary in our practice, but which is evolutionary, we believe". This proposal recommended the appointment of a committee from the bench, active practitioners, and faculties of the law schools of the State to make a study of the systems of judicature with particular reference to the following features: (1) a unified court of judicature having general superintendence of the administration of justice, and departments for conciliation, small claims, estates and trusts, contested cases, and review; (2) the substitution of rules of court for the statutory regulation of practice, including the simplification of pleading; (3) continuous sessions of the unified court and rules for expeditious determination of all matters of controversy; (4) prohibition of new trials in law actions and criminal cases except for erroneous legal decisions resulting in a verdict for the wrong party, a verdict clearly contrary to the facts or the law, or in an apparent miscarriage of justice; (5) prompt notice of appeal and certification of the record for review; (6) the substitution of safeguarded informations for indictments by the grand jury; (7) any proposal for a reform that the committee may think worthy of investigation.

This proposal was discussed, and after a motion to lay

[29] *Proceedings of the Iowa State Bar Association*, Vol. XXX (1924), pp. 198–200; *Laws of Iowa*, 1919, Ch. 349, 1921, Ch. 336, 1923, Ch. 312.

it on the table had been defeated, the motion to adopt it was carried. The Committee on Law Reform in presenting this proposal said that it believed that "it is incumbent upon the bench and bar of Iowa to make a determined effort to remedy as far as practicable the ancient complaint of delay, uncertainty and expensiveness in the administration of the law." It was contemplated in the action taken that the legislature should appoint the proposed commission, or authorize the Governor to make the appointment.[30]

IV

THE BAR IN PROFESSIONAL REGULATION

LEGAL EDUCATION AND ADMISSION TO THE BAR

The Association has consistently worked for the advancement of standards of legal education and admission to the bar. At its first session, in 1895, Emlin McClain, chairman of the Committee on Legal Education and Admission to the Bar, read the report recommending a statutory amendment requiring a showing of three years study and an English education equivalent to a high school course before examination and admission to the bar. Further recommendation called for a statute providing for the appointment by the Supreme Court of a standing committee of three members of the Bar to have charge of examinations for admission, under the directions and rules of the Supreme Court. After a general discussion, these recommendations were unanimously adopted together with a further resolution for transmittal of copies thereof to the Judiciary Committees of the Senate and the House.[31]

30 *Proceedings of the Iowa State Bar Association,* Vol. XXX (1924), pp. 132–145.

31 *Proceedings of the Iowa State Bar Association,* Vol. I (1895), pp. 26, 27, 72, 73.

The committee renewed its recommendations the following year and further recommended the appointment of a special committee to present the matter to the legislature. This report was adopted by the Association and similar action was taken in 1897.[32]

In 1899 the Association adopted the following recommendations of the Committee on Legal Education: (1) for a statute requiring for admission to the bar three years study of the law and a preliminary general education substantially equivalent to that of a high school course; (2) for a permanent commission of five, including the Attorney General, with additional members as necessary, to conduct the examinations before the Supreme Court for admission to the bar; (3) for a special committee of three members to bring these recommendations before the legislature.

On reporting to the Association in 1900 and 1901, the Committee on Legal Education was gratified to announce the enactment of the recommended measures into the law of Iowa, effective on July 4, 1901. Justice McClain commended the Association on putting the matter of admission to the bar into the hands of a permanent examining committee instead of leaving it to the mercy of temporary committees under the guidance of the Supreme Court, at the time when the courts are so crowded with cases that it is impossible for them to give adequate attention to the business. He lauded this as a notable achievement, and he congratulated the Association in having been able to take the step in advance.[33]

[32] *Proceedings of the Iowa State Bar Association*, Vol. II (1896), pp. 125, 126, Vol. III (1897), pp. 34–38.

[33] *Proceedings of the Iowa State Bar Association*, Vol. V (1899), pp. 26–28, 55, 56, Vol. VI, (1900), pp. 78, 79, Vol. VII (1901), 71, 72; *Laws of Iowa*, 1900, Ch. 11.

Thus Iowa was placed on an equality with other States in legal education requirements. In 1905, however, the Association of American Law Schools adopted a resolution requiring the completion of a four year high school course before admission to a law school. Iowa could not be expected to lag behind. Upon the recommendation of the Committee on Legal Education and Admission to the Bar the Association in 1906 adopted a recommendation for a four year high school course instead of three years as a prerequisite in preparation for the Iowa bar examination. The Law School of the State University could not afford to forego membership in the Association of American Law Schools, so the management changed the requirements for admission to that school to a four year high school course or its equivalent. This caused a discrepancy between the requirements of the law school and that of the State Board of Bar Examiners, and in 1907 the Iowa legislature amended the law relating to qualifications for admission to the bar so as to require a four year high school course or its equivalent.[34]

In 1914 the Association adopted three recommendations of the Committee on Legal Education and Admission to the Bar, as follows: (1) that the law schools of Iowa provide instruction in Federal Practice and Procedure and Jurisdiction of Federal Courts, and that applicants for admission be examined therein; (2) that the law regulating admission of attorneys from other States require that such person admitted to the bar in Iowa on motion make satisfactory showing by certificate of a judge that he has practiced law at least three years in such State, is of good character, and that he was duly admitted to practice according to the laws of the State from which he produces

34 *Proceedings of the Iowa State Bar Association,* Vol. XII (1906), pp. 69, 70, Vol. XIII (1907), pp. 86, 87; *Laws of Iowa,* 1907, Ch. 11.

the certificate; (3) that the rules governing admission to the bar should require that law office candidates must register with the Attorney General at the beginning of their period of study and must then submit their proofs of preliminary education. Two years later the Association recommended to the legislature that in all cases wherein a student pursues all or part of his legal studies in a law office, he be required to file in the office of the Clerk of the Supreme Court within ten days thereafter an affidavit showing the date at which such study commenced and that a similar affidavit be filed whenever a change is made from one office to another in the prosecution of such study. In presenting the report of the Committee on Legal Education in 1917, Attorney General H. M. Havner commended the superior showing made by the students of law schools over that made by students from law offices.[35]

In 1921 the Committee on Legal Education presented an elaborate report recommending several advanced steps in legal education requirements and the Association adopted the following recommendations: (1) that the course of study pursued in a law school be required to be in some law school in the United States approved by the Iowa Supreme Court; (2) that the course of study must have been pursued for at least three full years in a day law school, or for at least four years in a law school where the major part of the work is done at night. The Association rejected the committee's proposal to limit eligibility for admission to the bar to law school graduates and after January 1, 1927, to such law school graduates as should have had the equivalent of two years study in a college.[36]

[35] *Proceedings of the Iowa State Bar Association,* Vol. XX (1914), pp. 152–162, Vol. XXII (1916), p. 167, Vol. XXIII (1917), p. 72.

[36] *Proceedings of the Iowa State Bar Association,* Vol. XXVII (1921), pp. 158–178.

The matter of advanced standards again came up for consideration and discussion at the meeting of the Association in 1923. Upon the recommendation of the Committee on Legal Education and Admission to the Bar, the following resolution was adopted:

> Resolved, the Iowa State Bar Association endorses the resolution of the American Bar Association adopted September 1, 1921, that
>
> "Every candidate for admission to the Bar should give evidence of graduation from a law school complying with the following standards:
>
> (a) It shall require as a condition of admission at least two years of study in a college.
>
> (b) It shall require its students to pursue a course of three years duration if they devote substantially all of their working time to their studies and a longer course, equivalent to the number of working hours, if they devote only a part of their working time to their studies.
>
> (c) It shall provide an adequate library available for the use of the students.
>
> (d) It shall have among its teachers a sufficient number giving their entire time to the school to insure actual personal acquaintance and influence with the whole student body."[37]

These qualifications for admission to the bar were added by the Iowa Code Commission as section 14 to Code Comissioners' Bill No. 246 then pending before the special session of the Fortieth General Assembly of Iowa. The bill passed the House Committee on Judiciary with the section intact, but in the House an amendment prevailed to strike out section 14 and to insert in lieu thereof the present law. In 1925 the Association indorsed a suggestion to refer to its Law Reform Committee the idea of a proposed law "putting the power exclusively in the Supreme Court of deciding who should be admitted to the practice, rather than having the legislature enact or refuse to enact the

[37] *Proceedings of the Iowa State Bar Association*, Vol. XXIX (1923), pp. 95–114.

legislation that has been sought for by this Association and by the American Bar Association."[38]

CODE OF PROFESSIONAL ETHICS

The Iowa Bar Association adopted a Code of Professional Ethics in 1909. This action grew out of the suggestion of Judge H. M. Towner who presented an able paper before the Association in 1908, entitled, "A Proposed Code of Professional Ethics". Judge Towner set out in his paper the preamble which he had suggested to the committee of the American Bar Association for adoption with their proposed Code of Professional Ethics. This preamble was thereafter adopted by the American Bar Association and substantially adopted by the Iowa State Bar Association. In this preamble Judge Towner declared: "The lawyer is an officer of the state. The practice of law is a function of government. The practitioner owes duties to the state, as well as to his clients. The observance of high moral principles in the practice of the profession is essential to the full performance of the lawyer's obligations both to his country and to his client. Neither the furtherance of private interests, nor devotion to the success of clients, will justify infractions of those principles of right which constitute the lawyer's primary duty." The Association provided for the appointment of a Committee on Legal Ethics to coöperate with the committee of the American Bar Association, and with those of other States, and to prepare a Code of Professional Ethics for the State of Iowa for submission at the next annual meeting of the Association.[39]

[38] *Proceedings of the Iowa State Bar Association*, Vol. XXX (1924), pp. 145–147, Vol. XXXI (1925), pp. 124, 125.

[39] *Proceedings of the Iowa State Bar Association*, Vol. XIV (1908), pp. 74–82, Vol. XV (1909), pp. 55–69.

In the annual convention of 1909 the committee recommended to the Iowa Bar Association the adoption of the Canons of Professional Ethics adopted by the American Bar Association at its annual meeting in August, 1908. After discussion, canon 13 relating to contingent fees was adopted, while all the other canons were adopted without discussion. Upon consideration, the recommendation for an amendment to the law so as to include the proposed form of the oath of admission was also adopted.[40]

The Canons of Professional Ethics adopted by the American and Iowa State Bar Associations embrace almost the entire range of a lawyer's duties. The general substance of the preamble written by Judge Towner has been set out in the quotation preceding. The preamble states in the beginning:

> The Iowa State Bar Association, in conformity with the action of the American Bar Association, and with the independent action of other states, deems it expedient to formulate into canons the more important ethical principles which should govern the practice of the profession of law in the state of Iowa.

It concludes with the statement that "No code, or set of rules, can be framed which will particularize all the duties of lawyers in the varying phases of litigation, or in all of the relations of professional life."[41] An abstract of this code of ethics is set out in the following paragraphs:

(1) The general duty of the lawyer to the courts requires him to maintain toward them a respectful attitude, not for the sake of the temporary incumbents of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of

40 *Proceedings of the Iowa State Bar Association,* Vol XV (1909), pp. 55–69, 71–80, 81, 82.

41 *Proceedings of the Iowa State Bar Association,* Vol. XIV (1908), pp. 77, 78, Vol. XV (1909), pp. 56–58.

the Bar against unjust criticism and clamor. In the selection of judges, it is the duty of the Bar to endeavor to prevent political considerations from outweighing judicial fitness. Attempts to exert personal influence on the court by marked attention and unusual hospitality on the part of a lawyer to a judge, private communication or argument with the judge as to the merits of a pending cause, or any other device or attempt to gain from a judge special consideration or favor, should all be avoided. All attempts to curry favor with jurors by fawning, flattery, or pretended solicitude for their personal comfort are unprofessional. Suggestions of counsel as to the comfort or convenience of jurors should be made to the court out of the jury's hearing. A lawyer must never converse privately with jurors about the case; and both before and during the trial he should avoid communicating with them, even as to matters foreign to the cause. A lawyer owes to his clients, to the courts, and to the public the duty of punctuality in attendance in court and coöperation in the expedition of the trial and disposition of causes.[42]

(2) When assigned as counsel for an indigent prisoner, a lawyer ought not to ask to be excused for any trivial reason, and should exert his best efforts in such prisoner's behalf. It is the right of the lawyer to undertake the defense of a person accused of a crime, regardless of his personal opinion as to the guilt of the accused; otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense. In the trial of a case the lawyer is bound by all fair and honorable means, to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty, but by due process of law. The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done. The suppression of evidence capable of establishing the innocence of the accused is highly reprehensible. In supporting a client's cause, a lawyer should use his best efforts but only within the law. It is improper for a lawyer to assert in argument his personal belief in his client's innocence or in the justice of his cause. The lawyer owes "entire devotion to the interest of his client, warm zeal in the maintenance and defense of his rights, and the exertion of his utmost learning

[42] Code of Professional Ethics, Canons 1, 2, 3, 21, 23, in *Proceedings of the Iowa State Bar Association*, Vol. XV (1909), pp. 58, 59, 64, 65.

and ability,'' to the end that nothing be taken or withheld from him, save by the rules of law, legally applied. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, but the great trust of the lawyer is to be performed within and not without the bounds of the law. A lawyer should use his best efforts to restrain his clients from improprieties, particularly with reference to their conduct towards courts, judicial officers, jurors, witnesses, and suitors. If his client persists in such wrong-doing the lawyer should terminate their relation.[43]

(3) At the time of retainer, the lawyer should disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy. It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Duty forbids a lawyer from accepting subsequent retainers or employment from others in matters adversely affecting any interest of his client with respect to which confidence has been reposed. Before advising upon the merits of a client's cause, a lawyer should endeavor to obtain full knowledge of it and he is then bound to give a candid opinion of the merits and probable result of pending or contemplated litigation. Whenever the controversy will admit of fair adjustment, the client should be advised to avoid or end the litigation. A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel.[44]

(4) In dealing with trust property, the lawyer should report promptly his receipt of the money or other trust property of his client coming into his possession, and should not commingle such trust property with his own or use it except with the client's knowledge and consent. In fixing fees, lawyers should avoid charges which overestimate their advice and services as well as those which undervalue them. A client's ability to pay can not justify a charge in excess of the value of the service, though his

[43] Code of Professional Ethics, Canons 4, 5, 15, 16, in *Proceedings of the Iowa State Bar Association*, Vol. XV (1909), pp. 59, 62, 63.

[44] Code of Professional Ethics, Canons 6, 8, 9, in *Proceedings of the Iowa State Bar Association*, Vol. XV, (1909), pp. 59, 60, 61.

poverty may require a less charge, or even none at all. In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade. Contingent fees, when sanctioned by law, should be under the supervision of the court, in order that the clients may be protected from unjust charges. Controversies concerning his compensation are to be avoided by the lawyer so far as compatible with his self-respect and with his right to receive reasonable recompense for his services; and lawsuits with clients should be resorted to only to prevent injustice, imposition, or fraud.[45]

(5) A lawyer should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudices of a client in the trial or conduct of a cause. The client has no right to demand that his counsel shall abuse the opposite party or indulge in offensive personalities. When a lawyer is a witness for his client, except as to merely formal matters, such as the attestation or custody of an instrument, he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in court in behalf of his client. Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. It is unprofessional to make an anonymous statement. An *ex parte* reference to the facts should not go beyond quotation from the records and papers on file in the court; but even in extreme cases it is better to avoid any *ex parte* statement. The most worthy and effective advertisement possible, even for a young lawyer, and especially with his brother lawyers, is the establishment of a well merited reputation for professional capacity and fidelity to trust. This can not be forced, but must be the outcome of character and conduct. Solicitation of business by circulars or advertisements, by personal communications or interviews not warranted by personal relations, by indirection or touters of any kind such as allied real estate firms or trust companies advertising to secure the drawing of deeds or wills or offering retainers in exchange for executorships or trusteeships to be influenced by the lawyer, and indirect advertise-

[45] Code of Professional Ethics, Canons 11, 12, 13, 14, in *Proceedings of the Iowa State Bar Association*, Vol. XV (1909), pp. 61, 62.

ment for business by furnishing or inspiring newspaper comments concerning causes in which the lawyer has been or is engaged, or concerning the manner of their conduct, and all other self-laudation are all unprofessional.[46]

(6) A lawyer should decline association as colleague if his participation in the case is objectionable to the original counsel, but if the lawyer first retained is relieved, another may come into the case. When lawyers associated in a cause can not agree as to any matter vital to the interest of the client, the conflict of opinion should be frankly stated to him for his final determination, and his decision should be accepted unless the nature of the difference makes it impracticable for the lawyer whose judgment has been overruled to coöperate effectively, in which event he should ask the client to relieve him. Efforts, direct or indirect, in any way to encroach upon the business of another lawyer, are unworthy of those who should be brethren at the bar; but nevertheless, it is the right of any lawyer, without fear or favor, to give proper advice to those seeking relief against unfaithful or neglectful counsel, generally after communication with the lawyer of whom the complaint is made. All personalities between counsel should be scrupulously avoided. In the trial of a cause it is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of counsel on the other side. Personal colloquies between counsel which cause delay and promote unseemly wrangling should be carefully avoided. As to incidental matters pending the trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite lawyer to trial when he is under affliction or bereavement, forcing the trial on a particular day to the injury of the opposite lawyer when no harm would result from a trial at a different time, agreeing to an extension of time for signing a bill of exceptions, cross interrogatories, and the like, the lawyer must be allowed to judge. A lawyer should not ignore known customs of practice of the bar or of a particular court, even when the law permits, without giving timely notice to the opposing counsel. He should not take technical advantage of opposite counsel, and in case of an agreement fairly made with him but not reduced to writing as required by rules of

[46] Code of Professional Ethics, Canons 18, 19, 20, 27, in *Proceedings of the Iowa State Bar Association*, Vol. XV (1909), pp. 63, 64, 65, 66.

court, it is dishonorable to avoid performance even though the evasion may be legal.[47]

(7) The lawyer should not purchase any interest in the subject matter of the litigation which he is conducting. It is disreputable in a lawyer to hunt up defects in titles or other causes of action and inform thereof in order to be employed to bring suit, or to breed litigation by seeking out those with claims for personal injuries or those having any other grounds of action in order to secure them as clients, or to employ agents or runners for like purposes, or to pay or reward, directly or indirectly, those who bring or influence the bringing of such cases to his office, or to remunerate policemen, court or prison officials, physicians, hospital attaches, or others who may succeed, under the guise of giving disinterested friendly advice, in influencing the criminal, the sick and the injured, the ignorant or others, to seek his professional services. The lawyer must decline to conduct a civil cause or to make a defense when convinced that it is intended merely to harass or to injure the opposite party or to work oppression or wrong. His appearance in court should be deemed equivalent to an assertion on his honor that in his opinion his client's case is one proper for judicial determination. Every lawyer upon his own responsibility must decide what business he will accept as counsel, what causes he will bring into court for plaintiffs, what causes he will contest in court for defendants. The responsibility for advising questionable transactions, for bringing questionable suits, for urging questionable defenses, is the lawyer's responsibility. He has the right to decline employment.[48]

(8) The conduct of the lawyer before the court and with other lawyers should be characterized by candor and fairness. A lawyer openly, and in his true character may render professional services before legislative or other bodies, regarding proposed legislation and in advocacy of claims before departments of government, upon the same principles of ethics which justify his appearance before the courts. Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession,

[47] Code of Professional Ethics, Canons 7, 17, 24, 25, in *Proceedings of the Iowa State Bar Association,* Vol. XV (1909), pp. 60, 63, 65.

[48] Code of Professional Ethics, Canons 10, 28, 30, 31, in *Proceedings of the Iowa State Bar Association,* Vol. XV (1909), pp. 61, 66, 67.

and should accept without hesitation employment against a member of the bar who has wronged his client. The counsel upon the trial of a cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities. The lawyer should aid in guarding the Bar against the admission to the profession of candidates unfit or unqualified because deficient in either moral character or education. The lawyer should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice. No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render, any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. Above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.[49]

The proposed oath of admission reads as follows:

I DO SOLEMNLY SWEAR, OR AFFIRM,

I will support the Constitution of the United States and the Constitution of the State of Iowa;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge or approval;

[49] Code of Professional Ethics, Canons 22, 26, 29, 32, in *Proceedings of the Iowa State Bar Association*, Vol. XV (1909), pp. 32, 33, 64, 65, 67.

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice.[50]

The Committee on Legal Education recommended that the law schools of the State give special instruction in this code of ethics and that the Board of Law Examiners consider the advisability of including it among the subjects of examination. This recommendation was adopted by the Association.[51]

DISBARMENT OF ATTORNEYS

The disbarment of attorneys for cause is a matter closely related to the professional interest in legal ethics. Proposed recommendations regarding the subject have often come before the Association. In 1902, the Iowa Bar Association endorsed two proposals: (1) that the Code section requiring notice of disbarment proceedings to be personally served on an accused attorney be amended so as to permit the court to order service of notice by publication in cases wherein an attorney has departed from its jurisdiction and upon showing that personal service can not be had either within or without the State; and (2) that the law be amend-

[50] Proposed Oath of Admission in the *Proceedings of the Iowa State Bar Association*, Vol. XV (1909), pp. 68, 69. See also *Code of 1924*, Secs, 10917, 10920.

The provisions of Code Section 10920 "represent the lawyer's conception of his duty to his client, the court and the public. They do not proceed upon the theory that the character of either the lawyer or his calling, demand especial safeguards for the public protection, but because he, controlling legislation upon these matters, has manifested a higher conception of his position in the business world than many of his brothers in other lines, and of his duty to his client and the public."—Quoted from speech by T. S. Stevens in the *Proceedings of the Iowa State Bar Association*, Vol. XVI (1910), pp. 105, 106.

[51] *Proceedings of the Iowa State Bar Association*, Vol. XV (1909), p. 83.

ed so as to provide for the payment by the county of attorney fees in all cases wherein the attorney is appointed by the court to prosecute in disbarment proceedings — such compensation to be fixed by the court, not to exceed twenty dollars per day, and to be certified to the board of supervisors as in criminal cases.[52]

In 1912 the Association continued for consideration at its next annual meeting a proposal that it recommend that the procedure for the disbarment of attorneys should be placed by legislation under the statutes enacted for removal of public officers. Upon the recommendation of the Committee on Grievances, the Association in 1913 created a standing committee to be known as the Committee on Disbarment of Lawyers, such committee to be appointed annually by the joint action of the retiring and incoming presidents of the Association. This committee was charged with the duty of investigating all charges of misconduct of members of the Bar and instituting disbarment proceedings if in their judgment they are required. It was provided that the necessary and actual expenses of this committee, incurred in the performance of its duty, should be paid from the treasury of the Association. It was further recommended that the Attorney General be authorized by law to institute, appear in, and prosecute disbarment proceedings.[53]

Upon the recommendation of the Committee on Disbarment of Attorneys, further constructive action was taken in 1914, and rules XI, XV, and XXV were adopted as parts of the By-Laws of the Association. These provided for a disbarment investigative procedure under the charge of the

[52] *Proceedings of the Iowa State Bar Association*, Vol. VIII (1902), pp. 87, 88; *Code of 1924*, Sec. 10933.

[53] *Proceedings of the Iowa State Bar Association*, Vol. XVIII (1912), pp. 196, 197, 198, Vol. XIX (1913), pp. 48–53.

Grievance Committee. It was therein provided that this committee should report its findings to the Association, which might suspend or expel the accused from membership, or order the committee to institute proceedings for disbarment as provided by law, whether or not the accused be a member of the Association, and that the Association shall pay all costs and expenses incurred.[54]

Forward looking members of the Bar have sought a better mode of instituting and conducting disbarment proceedings. The method in use has not functioned well. It leaves the matter of disbarment to local and often prejudiced action. Either a judge on his own motion must take the drastic step of ordering proceedings against a lawyer practicing in his court, or not infrequently some one embittered by a sore experience with, or harboring partisan rancor toward the accused, is allowed to take the lead. If a local lawyer starts proceedings, the defendant sets up a hue and cry that professional jealousy prompts the action. For these various reasons, disbarment proceedings under the present law are frequently not invoked even when necessary or desirable. Mr. A. Hollingsworth, reporting for the Committee on Professional Ethics before the Association in 1923, suggested that a board be appointed by the Supreme Court to investigate each case and to prefer charges in a capacity similar to that of a grand jury, and that the proceedings be then placed in the hands of the Attorney General to be tried before the Supreme Court or before some judge other than the local judge. The proposition was referred to the Legislative Committee.[55]

[54] *Proceedings of the Iowa State Bar Association*, Vol. XX (1914), pp. 168, 169, 170, 211, 212, 215, 216; *Code of 1924*, Secs. 10929–10937.

[55] *Proceedings of the Iowa State Bar Association*, Vol. XXIX (1923), pp. 200–206.

Professor H. C. Horack, of the University of Iowa College of Law, has written an interesting presentation of this problem and its proposed solution in his

At its meeting in 1924, the Bar Association unanimously adopted the recommendation of the Committee on Professional Ethics that the matter of disbarment proceedings should be under the supervision of the Supreme Court of Iowa and that it be vested with jurisdiction in the first instance to try and determine all petitions or complaints in disbarment.[56]

CONTINGENT FEES REGULATION

In harmony with the annual address of its president, James W. Bollinger, and with Canon 13 of the Code of Legal Ethics adopted at that session, the Association in 1909 adopted the following recommendation proposed by the Committee on Law Reform: "The law should provide that contracts for contingent fees to attorneys, while permissible and lawful, should be subject to the approval of the court trying the case, or if there be a settlement out of court, be subject to review by any court having jurisdiction of the parties. The court in either case to have power to fix the fee notwithstanding the agreement of the parties."[57]

At the session of 1913 the Committee on Law Reform proposed the following recommendation: "In an action for damages based upon personal injuries, when a contingent fee is contracted for, such contract shall be presented to the court and receive the approval of the court before the action is commenced, and without such approval such contract

article, "Character Qualification and Disbarment Proceedings", published in the *Iowa Law Bulletin*, Vol. VIII, No. 2. This article was republished in the *Journal of the American Judicature Society*, Vol. VI, No. 6, for April, 1923, pp. 168–172. The Michigan legislature adopted the plan proposed by Professor Horack shortly after the publication of his article.— See the *Journal of the American Judicature Society*, Vol. VII, p. 27.

[56] *Proceedings of the Iowa State Bar Association*, Vol. XXX (1924), pp. 189–196.

[57] *Proceedings of the Iowa State Bar Association*, Vol. XV (1909), pp. 40, 62, 133, 134.

shall be void." C. S. Macomber objected to this proposal, saying: "I do not believe the bar of the State of Iowa has degenerated to that extent that they cannot be trusted to make contracts with their clients. When it goes out abroad that the bar themselves have such an opinion of themselves that they do not think they can make a contract with their clients unless it is approved by the court, if this convention passes that, I will move from the State of Iowa." His motion to table the motion to adopt the proposal was carried.[58]

The contingent fee question arose again before the Association the next year but no time for discussion or action upon it was afforded at this session and with several other proposals it was passed over without consideration.[59]

PROPOSED INCORPORATION OF THE BAR AND REGULATION OVER ATTORNEYS

The substantial growth of the Association furnishes problems of its own organization and functions. Thus in 1921 it was proposed to secure a statutory incorporation of the Association giving it regulatory power over the conduct of all practicing attorneys of the State. Upon the consideration of the experience of other States in this regard, a motion unanimously prevailed that the Association take no further steps at that time as to the matter of incorporating. At the 1924 session of the Association, however, a motion was adopted for the appointment of a committee to investigate the question of the incorporation of the Association by statute, and to report at the next session with recommendations. At the 1925 session the special committee submitted its report on "State Bar Organization". This

[58] *Proceedings of the Iowa State Bar Association*, Vol. XIX (1913), pp. 220, 227, 228.

[59] *Proceedings of the Iowa State Bar Association*, Vol. XX (1914), pp. 186, 202.

report is a thorough and scholarly one, entering into the history and development of similar plans of organization in several other States wherein such plans have functioned. After a careful review of legislation in other States the committee summarized its recommendations on this much mooted question as follows: "That this Association go on record favoring the legislation proposed for the establishment of a self-governing bar, and that the matter be left to the officers of the Association and the Executive Committee to be elected this morning, with instructions to prepare a draft of a bill to be submitted to the next session of this association with a view to introduction in the next session of the legislature." This report and the recommendation of the special committee was adopted by the Association.[60]

V

LAW REFORM PROPOSALS AND RECOMMENDATIONS

The proposal of law reforms has grown to be an important feature of the program of the annual sessions of the Iowa State Bar Association. The function of the Committee on Law Reform is the presentation before the Association of proposals for reform. These proposals stimulate free discussion among the members present and thus encourage an impartial consideration of the merits of the proposed measures. In many cases these proposals are also the recommendations of the Committee on Law Reform. Very frequently, however, the members of the committee are divided in their individual attitudes on specific proposals and often the committee submits questions for the consideration of the Association without any indorse-

[60] *Proceedings of the Iowa State Bar Association*, Vol. XXVI (1920), p. 172, Vol. XXVII (1921), pp. 98-103, Vol. XXX (1924), pp. 201, 202, Vol. XXXI (1925), pp. 167-178.

ment of such proposals by the committee. The interest in the discussions often results in prolonged debate.[61]

The functioning of the committees, however, is not limited to the presentation of proposals or recommendations to the Association. The Law Reform Committee is expected to present the recommendations adopted by the Association to the judiciary committees of the legislature. And occasionally special legislative committees are appointed by the president of the Bar Association for the specific purpose of presenting its recommendations to the legislature. Usually there are several members of the Association who are also members of the legislature, and the recommendations of the Association doubtless have considerable weight with the judiciary committee of both houses. It is, as a matter of course, to be expected that the legislature in passing measures will lag considerably behind the Bar Association's recommendations. It was humorously said by C. G. Saunders: "My observation has been that it takes about six years to disinfect a recommendation of the State Bar Association before the legislature takes it up and passes it." Undoubtedly, too, it requires considerable initiative and the pressure of persistent interest on the part of committees and others to forcefully present the recommendations of the Bar Association to the legislature. However, the recommendations of the Association and its indorsements of proposed measures are undoubtedly matters of considerable influence with many members of the legislature in their consideration of particular measures. In 1925, the Association adopted a more permanent plan for the Committee on Law Reform. It is to be composed of six members, two to be appointed each year for a term of three years each after the first two

[61] *Proceedings of the Iowa State Bar Association*, Vol. X (1904), pp. 60, 98, 129.

years. Two members of this committee are to be selected from the faculties of the law schools of the State. Provision was also made in the Constitution and By-Laws of the Association for a Committee on Legislation whereby two members out of the six composing it shall be appointed each year. This committee has special duties as to legislative matters.[62]

UNIFORM STATE LAWS

The Iowa Bar Association has coöperated in the promotion of uniform State laws. The National Conference of Commissioners on Uniform State Laws meets annually just preceding the meeting of the American Bar Association. It is composed of commissioners from fifty-three jurisdictions comprising the several States and Territories of the United States. In thirty-four of these Commonwealths, including Iowa, commissioners are appointed by the Governor under express legislative authority. This Conference of Commissioners has met in sessions for over thirty years and has drafted or approved more than thirty acts. Of the acts approved by this Conference, Iowa has adopted the following acts: the Acknowledgment Act, adopted in the *Code of 1897*; the Negotiable Instruments Act, adopted in 1902; the Warehouse Receipts Act, adopted in 1907; the Bills of Lading Act, adopted in 1911; the Sales Act, adopted in 1919; and the Limited Partnership Act, adopted in 1924.[63]

[62] *Proceedings of the Iowa State Bar Association*, Vol. XII (1906), p. 118, Vol. XXIII (1917), p. 69, Vol. XXV (1919), p. 137, Vol. XXVIII (1922), p. 119, Vol. XXX (1924), pp. 124, 144, Vol. XXXI (1925), pp. 94, 95, 163, 164, 212, 219.

[63] *Code of 1897*, Sec. 2946; *Laws of Iowa*, 1902, Ch. 130, 1907, Ch. 160, 1911, Ch. 155, 1919, Ch. 396; *Code of 1924*, Secs. 8245–8299, 9461–9660, 9661–9718, 9806–9863, 9930–10007, 10090; *Proceedings of the Iowa State Bar Association*, Vol. XXVIII (1922), pp. 78, 79, Vol. XXIX (1923), p. 208, Vol. XXXI (1925), pp. 159, 160.

A Committee on Uniform Laws was created in the Iowa Bar Association in 1907. An annual report of this committee is a regular feature of the program of the Association. These reports disclose the progress of uniform legislation and proposed laws in the several States. In 1913 the Association adopted the motion of Senator Saunders that it be made the duty of the president-elect of the Association to confer with the Governor of Iowa from time to time, in order that Iowa might thereafter be represented in the annual meetings of the National Conference on Uniform State Laws. The Thirty-ninth General Assembly provided by statute for the appointment by the Governor of three Commissioners on Uniform State Laws from the Bar of the State of Iowa to serve for terms of four years each without compensation for services but with actual expenses allowed.[64]

The Commissioners must meet at the State capitol at least once in two years, and must organize by the election of a chairman and a secretary from among their number. It is the duty of the Commissioners to attend the meeting of the National Conference of Commissioners on Uniform State Laws, or to arrange for the attendance of at least one of their number thereat. It is also the duty of the Commissioners to do all in their power to promote uniformity in State laws and upon all subjects in which uniformity may be deemed desirable and practicable, and to submit printed reports of their doings and their recommendations to the legislature. The expenses of the National Conference have been borne mostly by donations from the several State Bar

[64] *Proceedings of the Iowa State Bar Association*, Vol. XIII (1907), p. 33, Vol. XIX (1913), pp. 53–56, Vol. XX (1914), pp. 11, 12, Vol. XXI (1915), pp. 170, 171, 191, Vol. XXII (1916), p. 67, Vol. XXIII (1917), p. 157, Vol. XXIV (1918), p. 203, Vol. XXV (1919), p. 133, Vol. XXIX (1923), pp. 208–210, Vol. XXX (1924), pp. 263–266; *Laws of Iowa*, 1921, Ch. 201; *Code of 1924*, Secs. 65, 66.

Associations, except that a few States have made legislative appropriations. The Iowa State Bar Association has made appropriations from its treasury for the use of the National Conference as follows: $100 in 1913; $75 each year in 1916, 1917, 1918; $100 each year in 1921 and 1922; $250 in 1923; and $300 each year in 1924 and 1925.[65]

Thus there has been a coöperative movement in operation for the past thirty years, involving the progressive efforts of the American Bar Association and its Committee on Uniform Laws, the State Bar Associations and their several committees, and the National Conference on Uniform State Laws. Speaking of the importance of this Conference, General Nathan W. MacChesney, in an address entitled, "Uniform State Laws — Succor for the Public Salvation for the Bar", delivered before the Iowa State Bar Association at its session in June, 1922, said:

> It is the most efficient legislative drafting body in the land to lay hold of the many new undertakings of national importance constantly facing the legislators of the respective States. The work is the most constructive undertaken in its field in the United States since the adoption of the Federal Constitution, and its significance will be realized when attention is directed to the fact that since the debates resulting in the Constitution of the United States it is the only body of official representatives of the several States meeting in legislative assembly to discuss legal questions from a national point of view with particular reference to the needs of the respective States from which they come . . . . They form the best legislative body of which I know, the equal of which I do not believe exists in this country and their work may be justly compared to that of the Public Commissioners abroad to whose

[65] *Laws of Iowa*, 1921, Ch. 201, Secs. 3, 4; *Code of 1924*, Secs. 67, 68; *Proceedings of the Iowa State Bar Association*, Vol. XIX (1913), p. 170, Vol. XXII (1916), pp. 165, 166, Vol. XXIII (1917), pp. 157, 158, Vol. XXIV (1918), p. 204, Vol. XXVII (1921), p. 195, Vol. XXVIII (1922), p. 160, Vol. XXIX (1923), p. 210, Vol. XXX (1924), pp. 218, 219, Vol. XXXI (1925), pp. 160, 161.

work so much praise has been justly given, but the best work of which has been equalled and in some instances surpassed by our National Conference of Commissioners on Uniform State Laws.[66]

The Iowa Bar Association in 1920 indorsed the Code Commissioners' Bill No. 74, thus recommending for enactment into Iowa law the uniform limited partnership law, the uniform conditional sales act, and the uniform fraudulent sales act. The Fortieth General Assembly at its extra session enacted the limited partnership law. In its 1924 session the Iowa Bar Association unanimously adopted the motion of J. A. Devitt for the appointment of a Committee on Uniform Procedure to coöperate with a like committee of the American Bar Association in securing enactment of pending congressional legislation authorizing the Supreme Court of the United States to draft uniform procedure for the Federal courts of the United States.[67]

CODE REVISION

Naturally the lawyers of the State have an interest in the revision of the Iowa Code. The matter has frequently recurred at the annual sessions. In 1916 the Association adopted two resolutions, as follows: (1) that the statutes of Iowa be recompiled and reannotated to date, eliminating all obsolete laws, all to be embraced in one volume; (2) that immediately upon the close of each legislative session, the Code Editor and the Supreme Court Reporter publish in pamphlet form all laws passed at the session, without annotations, but indexed, to be sold at not more than cost. Again in 1917, the Association recommended an immediate recodification of our statutes. At its session in 1919, the

[66] *Proceedings of the Iowa State Bar Association,* Vol. XXVIII (1922), pp. 79, 81.

[67] *Code of 1924,* Secs. 9806–9863; *Proceedings of the Iowa State Bar Association,* Vol. XXVI (1920), pp. 89, 133–135, Vol. XXX (1924), p. 202.

three Code Commissioners of Iowa were invited to address the Association. Accordingly James H. Trewin, of Cedar Rapids, J. C. Mabry, of Albia, and U. G. Whitney, of Sioux City, each appeared upon the program in interesting discussions of the work of Code revision. The Association by a rising vote in 1921 adopted the resolution offered for an extra session of the Thirty-ninth General Assembly for the purpose of completing the work of Code revision. In 1922, the Association unanimously adopted the proposition that the next legislature of Iowa should proceed as expeditiously as possible with the work of Code revision.[68]

In fact, the Iowa Bar has favored something more substantial than the long-deferred revisions of the Code at uncertain periods. It has declared itself in favor of a legislative reference bureau of the State Library, already semi-officially recognized, and has recommended its full establishment and greater financial support by the legislature. The Association in 1923 discussed the question whether the legislature should provide for the appointment of a permanent State officer to revise and publish a new and complete revision of the statutes after every session of the legislature, and upon consideration referred the whole matter to the legislative committee of the Association for determination.[69]

The laws of the extra session of the Fortieth General Assembly, provided that the Reporter of the Supreme Court shall be the editor of the Code and have the following duties: to recommend revisions of the law to the legislature; to prepare manuscript copies of the laws properly ar-

[68] *Proceedings of the Iowa State Bar Association,* Vol. XXII (1916), pp. 214, 215, 218, 219, 220, Vol. XXIII (1917), pp. 51, 53, Vol. XXV (1919), pp. 23, 24, Vol. XXVII (1921), pp. 193–195, Vol. XXVIII (1922), pp. 90, 119.

[69] *Proceedings of the Iowa State Bar Association,* Vol. XXII (1916), pp. 215, 220, Vol. XXIX (1923), pp. 120, 145–148.

ranged and indexed; to edit and compile the Code for publication after each even-numbered session of the General Assembly; and to edit and prepare a series of annotations of the statutes of Iowa as prescribed by and at times as stated in the statute. Thus the legislative committee of the Bar Association might well feel that it was "a matter of congratulation that the work of code revision is nearing completion and that the legislature has given careful consideration to the propositions of law reform that have received the endorsement of this Association to the extent indicated herein."[70]

At the 1924 session of the Bar Association Senator Trewin advocated a continuous revision of the Code to avoid future congestion and suggested that the "Bar Association should appoint a strong committee on code revision whose assistance the code editor will no doubt welcome." A motion by Emmet Tinley that the president appoint such a committee as recommended by Mr. Trewin was unanimously adopted.[71]

PROBATE ADMINISTRATION

The intimate experience of the Bar with the administration of probate business brings to their constant attention the operation of the probate administration and suggests to them improvements in the laws. Hence proposals for changes in the probate laws are often made to the Association, and frequently such proposals are recommended by it. However, the proposal that a statute be enacted creating a probate court in each county with jurisdiction in all probate matters, thus taking the probate division out of the

[70] *Laws of Iowa,* 1924 (Extra Session), Ch. 3, Sec. 21; *Proceedings of the Iowa State Bar Association,* Vol. XXX (1924), pp. 147–151.

[71] *Proceedings of the Iowa State Bar Association,* Vol. XXX (1924), pp. 215, 216, 262.

district court entirely and creating a separate court in each county to administer it, was not adopted.[72]

A resolution that the probate business, except jury trials and actions involving the construction of wills, should be placed in charge of the clerk of the court, who should be a qualified lawyer, clothed with full jurisdiction, was vigorously opposed, but an amended proposal was adopted by the Association recommending "some legislation that will better facilitate and expedite the transaction of the probate business of the several counties of the State, and that will provide for a more thorough examination of reports of guardians and administrators." C. P. Holmes, of Des Moines, suggested to the Association that this matter could be remedied by the appointment of a referee in probate. The Supreme Court of Iowa has since decided that, under the statute, such a referee may be appointed by the court in the form of a standing order of appointment for all probate reports, and that the clerk of the district court may be appointed as such referee and personally receive compensation therefor.[73]

The proposal that the court in its discretion may refuse to appoint a non-resident of the State as executor, and in case he does appoint a non-resident as executor, he may require him to give bonds regardless of any provision of the will to the contrary, aroused vigorous discussion, but it was adopted as a recommendation of the Association in 1906, and was readopted in 1907 and again in 1908. The proposal to amend the statutes so as to provide that an action to set aside the probate of a will must be brought within two years

[72] *Proceedings of the Iowa State Bar Association*, Vol. XXVII (1921), pp. 99, 125, 126.

[73] *Proceedings of the Iowa State Bar Association*, Vol. II (1896), pp. 105, 106, 129, 130, 131, 132; Burlingame v. Hardin County, 180 Iowa 920; *Code of 1897*, Sec. 3393; *Code of 1924*, Sec. 12041.

was withdrawn, a recent statute having been enacted accomplishing the purpose. The proposal for probate of wills upon notice and petition as in ordinary proceedings, objections if any to be by answer, was rejected. The need for wider authority in prescribing notice for the probate of a will than that providing that the court in its discretion may prescribe different notices was recognized by recommending an amendment that the court or judge be so authorized. In accordance with this recommendation, the law now authorizes the court or judge in vacation, or clerk, in his discretion, to prescribe a different notice of hearing of probate of a will than the general statutory notice.[74]

Adverse action was taken as to Code Commissioners' Bill No. 236, relating to estates of decedents. This bill provided that the administrator should bring an equitable action within sixty days after his appointment for the express purpose of determining facts as follows: (1) the correct description of all the real estate in which the decedent had any interest at the time of his decease; and (2) the names of all persons interested or claiming an interest therein, and the nature and extent thereof. The discussion developed positive opposition to this bill, and the motion to recommend it was decisively rejected. The Association at three annual sessions indorsed the recommendation to the General Assembly that a statute be enacted providing that a final decree of distribution definitely establishing the rights of all parties shall be entered in all probate proceedings. The purpose of this proposal was accomplished by the enactment of a law providing that the executor or administrator be charged with the duty of supplying the de-

[74] *Proceedings of the Iowa State Bar Association,* Vol. XII (1906), pp. 79, 88–92, Vol. XIII (1907), pp. 69, 74, Vol. XIV (1908), p. 105, Vol. XIX (1913), pp. 220, 222–226, Vol. XXII (1916), pp. 215, 220; *Code of 1897,* Sec. 3284; *Laws of Iowa,* 1913, Ch. 282, 1919, Ch. 88; *Code of 1924,* Sec. 11865.

sired record by a report filed within thirty days after his appointment and by the setting forth of a complete record of the specified particulars in his final report.[75]

In 1916 the Bar Association recommended to the General Assembly that Section 3379 of the *Supplement to the Code* be amended in regard to regulation of an action in behalf of a surviving spouse's claim to more than one-half of the estate. The Thirty-seventh General Assembly responded by the enactment of an amendment to the law relating to the disposition of the property of an intestate who dies leaving a surviving spouse and no issue, and providing for the appraisement of the property of the estate, a trial on the objections if any, and a final order of the court in the matter of such estate and its appraisement to have the same force and effect as a decree in equity.[76]

The Association referred back to the Committee on Law Reform a proposal for legislation stopping the allowance by administrators or executors of the claims of children for services or money rendered or loaned to the deceased parent until proper notice be given to the other beneficiaries of the estate.[77]

A proposal was made to strike the last clause from the following Code provision relating to the sale of real estate of a decedent: "Before any order to that effect can be made, all persons interested in such real estate shall be served with notice in the same manner as prescribed for the commencement of civil actions, unless a different one

[75] *Proceedings of the Iowa State Bar Association.* Vol. XIX (1913), pp. 221, 228, 229, Vol. XX (1914), pp. 186, 202, Vol. XXVI (1920), pp. 89, 122–133, Vol. XXVII (1921), pp. 99, 125, Vol. XXIX (1923), p. 116, Vol. XXX (1924), pp. 148, 149; *Code of 1924,* Secs. 11912, 12071.

[76] *Proceedings of the Iowa State Bar Association,* Vol. XXII (1916), pp. 216, 220–222; *Laws of Iowa,* 1917, Ch. 250; *Code of 1924,* Secs. 12017–12023.

[77] *Proceedings of the Iowa State Bar Association,* Vol. XXIV (1918), pp. 90, 100, 101.

is prescribed by the court or judge.'' The Association unanimously rejected this proposal.[78]

The Association recommended the enactment by Congress of laws regulating the assessment of property of estates liable to the Federal inheritance tax within a definite time and providing for appeal from the assessing body to some proper court.[79]

The Association at three sessions indorsed the recommendation that the expense of fees of surety bonds of trustees, guardians, administrators, and executors may, in the discretion of the court, be allowed as part of the expenses of the estate or guardianship. The law conferring upon trust companies and State and savings banks power to act as trustee, guardian, executor, receiver, administrator, and in other similar capacities should be repealed in the judgment of the State Bar Association. A bill to this effect was presented to the legislature but was not enacted.[80]

A proposal that the statute regarding the giving of bonds by guardians be so amended as to make the rule the same as in cases of sales of real estate by administrators was rejected. The Association tabled a proposal that persons related within the fourth degree should be disqualified to act in the capacity of guardians of the property of minors.[81]

In 1902 the Association recommended that Code Section

[78] *Proceedings of the Iowa State Bar Association,* Vol. XXVIII (1922), pp. 89, 99; *Code of 1897,* Sec. 3324; *Code of 1924,* Secs. 11933–11935.

[79] *Proceedings of the Iowa State Bar Association,* Vol. XXVII (1921), p. 131.

[80] *Proceedings of the Iowa State Bar Association,* Vol. XII (1906), pp. 79, 112, Vol. XIII (1907), pp. 69, 74, Vol. XIV (1908), p. 105. Vol. XXVIII (1922), pp. 89, 102, 103, Vol. XXIX (1923), p. 117, Vol. XXX (1924), p. 150 (8).

[81] *Proceedings of the Iowa State Bar Association,* Vol. VII (1901), pp. 108, 219, 220, Vol. XIX (1913), pp. 220, 226, 227.

3220 be so amended that the appointment of a temporary guardian may be made on such notice as may be prescribed by the court or judge, and in case of emergency that such appointment may be made without notice. In 1922 the Association recommended such amendment of the statute as to provide for the appointment of a temporary guardian by a judge in vacation on such notice of hearing upon the application as fixed by the judge, but it rejected the proposal that such temporary guardian may have power under the order of the court to transfer real and personal property of the ward. The recommended portion of the proposition was in effect enacted into law.[82]

EQUITY PROCEDURE

Various proposals have come before the Bar Association relating to changes in equity procedure. After consideration of the matter, the Association recommended that equitable actions should be triable at the first term, subject only to the right of continuance for proper cause.[83] It rejected the proposal that when a party demurs to a pleading thus raising an issue of law for the court he should either stand upon the demurrer and appeal or waive the question submitted by the demurrer. However, approval was given to the proposal that the statute be amended so as to provide that in all cases an equitable demurrer must be specific.[84] The Association postponed consideration of a proposal that the rules of pleading be further simpli-

[82] *Proceedings of the Iowa State Bar Association,* Vol. VIII (1902), pp. 87, 88, Vol. XXVIII (1922), pp. 89, 94-99; *Code of 1897,* Sec. 3220; *Code of 1924,* Secs. 12619–12621.

[83] *Proceedings of the Iowa State Bar Association,* Vol. XX (1914), p. 202, Vol. XXIII (1917), pp. 51, 55, 56.

[84] *Proceedings of the Iowa State Bar Association,* Vol. XVII (1911), pp. 124, 189–193, Vol. XIX (1913), pp. 221, 230, 231, Vol. XXVII (1921), pp. 99, 116–123.

fied by the adoption of auxiliary methods for ascertaining the specific issues to be contested, such as by a preliminary judicial examination of either or each party by the other party to the suit.[85]

The Association recommended a rule modifying the practice on appeals to the United States Circuit Court of Appeals in equity cases with respect to the abstract of the evidence offered and introduced in the trial below and all objections, rulings, and offers of testimony therein; and also recommended a modification of the rules of practice in this circuit providing for a demurrer to an answer in equity causes. It recommended the abolition of the general equitable demurrer in Iowa and the substitution therefor of the motion attacking pleadings in equity, as provided by the rules of the Federal court. It twice indorsed Code Commissioners' Bill No. 229, embodying principles of equitable reform such as the substitution of the motion for the general demurrer in attacking pleadings in equity cases but leaving the law intact in regard to demurrers in actions at law. This bill was enacted into law, going into effect with the *Code of 1924*. The Association voted its disapproval of a proposal to change the law so as to provide for only two kinds of actions — civil and criminal; to abolish the distinction between actions at law and suits in equity and the existing rule which prohibits the joinder of causes of action at law with those in equity; and to provide for but one form of civil action in Iowa.[86]

JUDICIAL ADMINISTRATION

The improvement of judicial administration by bettering the welfare of officers, the conditions of service, and

[85] *Proceedings of the Iowa State Bar Association*, Vol. XXIII (1917), pp. 52, 63, 64.

[86] *Proceedings of the Iowa State Bar Association*, Vol. XIII (1907), pp. 99,

the means of efficiency often receives the attention of the Bar. The Association recommended in 1900 that the salaries of judges of the Supreme and district courts be increased, and that the district judges be paid their necessary and actual expenses incurred while holding court outside of the county of residence, including travelling expenses. The next year it unanimously adopted the recommendation that the salaries of district judges be raised to $4000 per year. In 1902, reports to the Bar Association congratulated it upon the enactment by the Twenty-ninth General Assembly of a statute increasing the salaries of district judges from $2500 to $3500. Full realization of these recommendations was later achieved in the statute raising salaries of district judges to $4000 per year and authorizing the expense allowance as originally recommended by the Bar Association. Since this legislative action the Association has adopted a resolution recommending further substantial increases in the salaries of all judges of the Supreme, district, superior, and municipal courts. Another resolution was adopted in 1924 indorsing bills pending in Congress for an increase of Federal judges' salaries and urging Congressmen from Iowa to support the enactment of such bills into law.[87]

In 1898 the Committee on Law Reform recommended a law increasing county attorneys' salaries. The committee reported that the law abolishing the system of district attorneys and establishing the system of county attorneys in each county, with power in the board of super-

100, Vol. XXIV (1918), pp. 89, 90, 98–100, Vol. XXVI (1920), pp. 89, 104–106, Vol. XXIX (1923), pp. 117, 121–128, Vol. XXX (1924), p. 148, Vol. XXXI (1925), pp. 96, 97, 113, 114; *Code of 1924*, Sec. 11130.

87 *Proceedings of the Iowa State Bar Association*, Vol. VI (1900), pp. 56, 163, Vol. VII (1901), pp. 108, 218, Vol. VIII (1902), pp. 24, 87, Vol. XXVI (1920), p. 173, Vol. XXX (1924), p. 205; *Laws of Iowa*, 1902, Ch. 13, 1915, Ch. 92, 1917, Ch. 235, 1919, Ch. 70.

visors to fix the salaries of the county attorneys, had been a great detriment to the public service, since in the great majority of the counties the supervisors had provided such meager salaries that competent attorneys would not accept the office. The report contained the following comment: "Often attorneys without experience, who are just commencing the practice of law, are elected to this office. The Board is thus deprived of proper legal advice, often resulting in much loss to the county, while the criminal prosecutions are placed in inefficient hands. If the present system is to be maintained then we believe that the legislature should, by a general law, fix the salaries of County Attorneys, graded according to population of the county, and thereby secure the services of able and experienced attorneys." After able discussion, the recommendation was unanimously adopted. In principle if not sufficiently in substance, this recommendation has received legislative sanction.[88]

The Association indorsed Code Commissioners' Bill No. 251 entitled "Security for Witnesses in Criminal Proceedings". The bill had previously received the recommendation of the County Attorneys' Association. It was designed to aid county attorneys in the performance of their duty by providing that a witness who is under bond for appearance at court and who does not appear may be declared guilty of an offense such that if he escapes from the State he may be brought back.[89]

It was recommended that a statute should be enacted providing that actions may be brought at any time upon proper notice, without reference to term time, and that

[88] *Proceedings of the Iowa State Bar Association*, Vol. IV (1898), pp. 35, 65, 66–68; *Supplement to the Code of Iowa, 1907*, Sec. 308; *Code of 1924*, Sec. 5228.

[89] *Proceedings of the Iowa State Bar Association*, Vol. XXVI (1920), pp. 89, 133.

issues may be made up in vacation. The Association, however, indefinitely postponed the proposal that a statute should be enacted prohibiting the dismissal of a cause without prejudice after a motion for a directed verdict has been submitted to the court. In 1925 the Association unanimously adopted the report of the Committee on Code Revision, recommending a law designating as "return day" the day on which any person is required to appear in court, and providing that such day may be the second day of any term of court as under the present law, or the second day of any week of any term of court, but that if a return day other than the second day of court is designated as return day, than the notice required for appearance shall be five days longer than the notice now required by law. The object of this bill is to facilitate the beginning and termination of proceedings in court.[90]

It is sometimes suggested that some restraint be put upon the right of parties to start suits, dismiss them for strategic purposes, and start them again. A suggested amendment to the statute on the dismissal of an action would provide that no case shall be maintained against the same parties upon the same cause of action which has been dismissed when dismissal was made after the jury was sworn and without payment of the costs accrued at the time of dismissal, unless the trial court shall upon application and showing made, determine that the case should again be brought in the furtherance of justice. This proposal was laid on the table.[91]

After a vigorous discussion, the Association in 1916 de-

[90] *Proceedings of the Iowa State Bar Association,* Vol. XXVII (1921), pp. 99, 128, 129, Vol. XXIX (1923), pp. 120, 149, Vol. XXXI (1925), pp. 151–153, 156.

[91] *Proceedings of the Iowa State Bar Association,* Vol. XXII (1916), pp. 210–214; *Code of 1897,* Sec. 3764; *Code of 1924,* Sec. 11562.

clared in favor of the recommendation that the office of justice of the peace should be abolished and that a new ambulatory court should be established to be presided over by a lawyer called the "County Magistrate". This court should have original jurisdiction over all civil cases involving less than $500 and the same criminal jurisdiction as now exercised by the justices of the peace.[92]

Code Commissioners' Bill No. 224 entitled "Court Rules for Conciliation of Small Claims", received great attention in discussion in the session of the Association. This bill, which with conceded changes and amendments received the indorsement of the Association, was enacted into law by the Fortieth General Assembly.[93]

RULES OF EVIDENCE

The Bar Association is alert to proposed changes in the law of evidence, some of which are recommended by it and some of which are rejected. It was proposed to the Association that all expert witnesses in medical and surgical cases should be appointed and their compensation fixed by the court, and that any expert witness may be examined as to any compensation paid or promised, in addition to that allowed by statute or by the court, as affecting his credibility as such witness. After considerable discussion, this proposal was rejected. The following question was answered in the negative: "Would provisions for the appointment by the court of experts on application of a party to the suit and to exclude other evidence be advisable and constitutional?"[94]

[92] *Proceedings of the Iowa State Bar Association*, Vol. XXII (1916), pp. 216, 222–226.

[93] *Proceedings of the Iowa State Bar Association*, Vol. XXVI (1920), pp. 90–104; *Laws of Iowa*, 1923, Ch. 265; *Code of 1924*, Secs. 10820–10824.

[94] *Proceedings of the Iowa State Bar Association*, Vol. X (1904), pp. 59, 93–97, Vol. XI (1905), pp. 58, 71.

The Association tabled the resolution that Section 5373 of the *Code Supplement* be repealed or that in any event the defense should make discovery of its witnesses the same as the prosecution in criminal cases. This section limits the county attorney in offering evidence supporting an indictment to the evidence given before the committing magistrate or grand jury, or to four days notice of introduction of other evidence, or to leave of court which, if obtained, entitles the defendant to an election for a continuance. It also tabled two other propositions — that the rule against impeaching one's own witness be abolished; and that the rule as to impeachment by a party of his own witness be so amended that if a party has been misled by a witness and has thereby been surprised by the hostile testimony of such witness he be permitted upon proper showing to strike or withdraw the testimony thus given in the case.[95]

Proposals for the amendment of Code Section 4604, relating to the rule of exclusion of testimony of witnesses as to a transaction with a person since deceased, were separately decided. Two of them were adopted: that the inhibition of the rule shall apply to the husband or wife of the party calling the witness as to any alleged conversation or transaction between the party and the deceased even though the witness took no part in such conversation or transaction; and that its inhibition shall not apply to any witness whose interest in the event of the suit is adverse to the party calling him. The third proposal, that the inhibition of the rule shall not apply to a witness who is a mere party to the suit if such party has no interest in the event of the issue upon which he testifies or if his in-

[95] *Proceedings of the Iowa State Bar Association*, Vol. XXII (1916), pp. 216, 227, Vol. XXIII (1917), pp. 51, 58, 59; *Supplement to the Code of Iowa, 1913*, Sec. 5373; *Code of 1924*, Secs. 13851–13853.

terest therein is adverse to the party calling him, was tabled.[96]

A proposal was submitted that when the trial judge considers it necessary in order to expedite the trial or secure more just results, he may limit the number of witnesses on a given question, exclude further cumulative evidence on the same point, require admissions of record by the parties to the suit as to the undisputed matters, or himself interrogate any witness for the purpose of arriving at the truth. This proposal was not adopted in the above form, but the following proposal was recommended in its stead: "When the trial judge considers it necessary, in order to expedite the trial, he may require admissions of record by the parties as to undisputed matters." Another plan for the shortening and simplification of lawsuits was indorsed in the proposal that the statute be amended so as to permit either party to a suit to place the opposite party upon the witness stand for examination without being bound by his testimony. These propositions were vigorously discussed before the Association. The Legislative Committee reported as to the latter: "This proposition did not get beyond the confines of the committee".[97]

The Bar Association has recommended that the statute be amended so as to permit a party, subject to the order of the court or judge, to take depositions upon oral interrogatories and to serve his notice accordingly. It was urged in support of this proposal that the method of written interrogatories is wholly inadequate to obtain the testimony of an unwilling witness. The report as to Code

[96] *Proceedings of the Iowa State Bar Association,* Vol. XXIII (1917), pp. 51, 57, 58; *Code of 1897,* Sec. 4604; *Code of 1924,* Secs. 11257, 11258.

[97] *Proceedings of the Iowa State Bar Association,* Vol. XXIII (1917), pp. 52, 64–66, Vol. XXIX (1923), pp. 120, 134–143, Vol. XXX (1924), p. 150 (10).

Commissioners' Bill No. 230, entitled "Evidence — Depositions", was considered by the Association and with proposed amendments was indorsed. The Association also considered the proposal for an amendment to the law so as to provide that a party desiring to take depositions outside of the State may apply to the court or judge for an order directing that a commission issue for the taking of such depositions upon oral interrogatories of the moving party. During the consideration of the matter Judge Jesse A. Miller proposed the recommendation of the Uniform Deposition Act for consideration by the Legislative Committee of the Association. The action taken resulted in both the original proposal and the Uniform State Act in relation to the taking of depositions being referred to the Legislative Committee for their consideration and future action. Later the committee reported to the Association: "The law was rewritten but without substantial change in regard to the taking of depositions."[98]

The Association recommended amendment of Code Section 4623 in relation to the admissibility of books of account as evidence, to the end that the statute may be made to conform more nearly to modern and improved methods of bookkeeping. The Thirty-eighth General Assembly responded by enacting a law authorizing the admission in evidence, as books of account, of any loose-leaf or card or other form of entry which may be in use in the ordinary course of business by the party seeking to prove an account against another, subject to identification as being the original entry of such account.[99]

[98] *Proceedings of the Iowa State Bar Association,* Vol. XXIII (1917), pp. 52, 59–62, Vol. XXVI (1920), pp. 89, 107–111, Vol. XXIX (1923), pp. 120, 129–131, Vol. XXX (1924), p. 150; *Code of 1924,* Secs. 11358–11399.

[99] *Proceedings of the Iowa State Bar Association,* Vol. XX (1914), pp. 186, 202; *Code of 1897,* Sec. 4623; *Laws of Iowa,* 1919, Ch. 393; *Code of 1924,* Sec. 11282.

The proposal that the bulk sales law be so amended as to raise a conclusive presumption of fraud on the part of both seller and buyer in the case of non-compliance with its provisions was tabled by the Association, which also rejected a proposal the effect of which would be to impose upon the defendant in all cases the burden of proving contributory negligence of the plaintiff in all actions brought in the courts of Iowa to recover damages caused by the negligence of the defendant. In behalf of this proposal it was argued: that negligence is never presumed unless it is made a presumption by law, and that the law is not logical when it places upon the plaintiff the burden of proving that the defendant has been guilty of negligence, that the plaintiff himself has been free from contributory negligence, and that contributory negligence should always be a defense for the defendant to prove.[100]

Relative to interrogatories annexed to a pleading it was recommended that Section 3605 of the *Code of 1897* be repealed, and that in lieu thereof it be enacted that the party answering shall be confined to answers which are responsive to the questions asked, that any answers or part thereof which are not directly responsive to the questions asked and material to the issues involved may be stricken out on motion by the objecting party. The old provision, however, remains the law.[101]

CRIMINAL PROCEDURE

Interesting and important changes in the law of criminal procedure have been proposed before the Association. It is significant to note that the trend of these proposals in

[100] *Proceedings of the Iowa State Bar Association*, Vol. XXIII (1917), pp. 51, 56, Vol. XXVIII (1922), pp. 89, 100, 101; *Supplemental Supplement to the Code of Iowa, 1915*, Sec. 3593-a; *Code of 1924*, Sec. 11210.

[101] *Proceedings of the Iowa State Bar Association*, Vol. XXX (1924), pp. 127–129; *Code of 1897*, Sec. 3605; *Code of 1924*, Sec. 11186.

Iowa has been in the direction of curtailing privileges and advantages of defendants and in the direction of a more impartial view of the State as a party with rights to be considered as well as those of defendants. A thoroughgoing discussion of "Proposed Reforms in Criminal Procedure" was afforded in the paper of Judge Deemer published in the proceedings of the Bar Association for 1908.[102]

A proposal was submitted to the Association that a constitutional amendment should be adopted providing for the abolition of the grand jury and for placing parties upon trial upon information. O. M. Brockett called attention to the fact that Iowa already has such law in the third provision of the constitutional amendments of 1884 and that there is apparent conflict between this amendment and section eleven of the Bill of Rights in the Constitution of Iowa. The proposition was then rejected.[103]

The Association adopted a proposal recommending that Congress should be memorialized to pass a statute authorizing a defendant charged before a United States Commissioner to waive the right of indictment and to go to trial upon information filed by the Federal District Attorney, and recommending a constitutional amendment if required for the purpose.[104] It adopted the proposal that in any matter of formal averment an amendment of an indictment be permitted to the county attorney. In substance, this proposal has since been written into the law.[105] A reso-

[102] *Proceedings of the Iowa State Bar Association*, Vol. XIV (1908), pp. 89–103.

[103] *Proceedings of the Iowa State Bar Association*, Vol. XI (1905), pp. 58, 71–74, 140–145; Constitution of Iowa, 1857, Art. I, Sec. 11, Amendments of 1884, Amendment 3.

[104] *Proceedings of the Iowa State Bar Association*, Vol. XXII (1916), pp. 215, 220.

[105] *Proceedings of the Iowa State Bar Association*, Vol. XII (1906), p. 79, Vol. XIII (1907), p. 99; *Code of 1924*, Secs. 13744–13747.

lution was adopted providing that: "In any county the district court may, if in its opinion necessary to the proper administration of justice, appoint an assistant to the county attorney to assist in the trial of a person charged with a felony."[106]

A proposal that Section 5484 of the *Code of 1897* be amended by striking therefrom the provision that the attorney or attorneys for the State shall not, during the trial of a criminal case, refer to the fact that the defendant did not testify in his own behalf was tabled. This proposal was again rejected by the Association in 1925.[107] A proposal to repeal the law requiring the State to provide an attorney for a defendant in a criminal case was postponed for consideration at a later meeting, but the matter was not again referred to the Association. The Association tabled a proposal that a statute should be enacted permitting the State to secure a change of venue in the trial of criminal cases upon the same conditions that such change is allowed to a defendant. The Fortieth General Assembly, however, enacted a law to this effect. The Association rejected a proposal recommending such a change in existing statutes as will eliminate the right to file a motion in arrest of judgment in a criminal case for any cause appearing on the face of the indictment, or for any other cause arising prior to the time the jury is impaneled.[108]

In one instance the Association was charged with committing itself to sweeping away the ancient safeguard that

[106] *Proceedings of the Iowa State Bar Association*, Vol. XVI (1910), pp. 193, 194.

[107] *Proceedings of the Iowa State Bar Association*, Vol. XXVII (1921), pp. 127, 128, Vol. XXXI (1925), p. 116; *Code of 1897*, Sec. 5484; *Code of 1924*, Sec. 13891.

[108] *Proceedings of the Iowa State Bar Association*, Vol. IV (1898), pp. 36, 68-73, 75, 91–93, Vol. V (1899), pp. 25, 59–73, Vol. XXVII (1921), pp. 99, 112–115, Vol. XXIX (1923), p. 115; *Laws of Iowa*, 1923, Ch. 221.

no man shall be twice put in jeopardy for the same offense; it adopted the recommendation for a constitutional amendment to prevent a defendant in a criminal case, after an appeal by him and a reversal of the judgment of the lower court, from relying upon the proceedings or verdict in the case as an adjudication of any fact or right.[109] At a later period the Association tabled a proposal urging such legislative action or constitutional amendment, if necessary, as will preclude a defendant who has been convicted of any degree of the offense charged, which verdict is upon his motion set aside, from pleading such verdict as previous jeopardy for adjudication upon a subsequent trial. It thus rejected the further extension of the principle of the rule of the Supreme Court of the United States, which holds relating to a defendant: "When at his own request he has obtained a new trial, he must take the burden with the benefits and go back for a new trial of the whole case."[110]

After a well sustained discussion of the merits of both sides of the question, the Association in 1916 rejected the proposal that the death penalty for murder should be abolished in this State.[111]

THE JURY SYSTEM

Questions relating to the jury system and its workings have come before the State Bar Association. As early as the first annual session in 1895 a special Judicial Committee submitted a report to the Association setting forth some criticisms of the jury system and proposing remedial

[109] *Proceedings of the Iowa State Bar Association,* Vol. V (1899), pp. 25, 73, 74, Vol. VI (1900), pp. 56, 57, 68, 76.

[110] *Proceedings of the Iowa State Bar Association,* Vol. XXII (1916), pp. 216, 277; Trono *v.* United States, 199 U. S. Reports, p. 521.

[111] *Proceedings of the Iowa State Bar Association,* Vol. XXVIII (1922), pp. 90, 108–116.

measures. Consideration of this report, however, was deferred for the time being. In 1906 a Committee on Laws Governing Drawing of Grand and Petit Jurors submitted a report recommending legislation requiring township trustees to return lists of names of voters for jurors in the years when there is no general election at the same time of year and in the same manner as in the years when there is a general election. This report was adopted.[112]

In 1909 the Association recommended a change in the law respecting the preparation of jury lists so as to substitute for the judges of election a jury commission to prepare the lists. The whole matter was fully discussed and action was taken for a committee to draft a bill to present to the next legislature in behalf of a jury commission system. The next year the jury commission bill was presented before the Association by William McNett of Ottumwa, who also addressed the Association in behalf of the bill. An amendment to the bill was offered dividing the commission between the two leading political parties. The amendment was adopted carrying also the approval of the proposed bill, and it was left with the committee to fill in the blank making it applicable to certain counties. This bill was introduced in the legislature but no action was secured.[113].

In 1914 the Association recommended to the ensuing General Assembly the enactment of a statute modifying the then existing system of selecting names for petit and grand juries, and providing for a jury commission to select the names from which the panels for both the petit and grand juries should be drawn. Action was also taken to have a committee appointed to formulate and draft a bill

[112] *Proceedings of the Iowa State Bar Association*, Vol. I (1895), pp. 76, 77, Vol. XII (1906), pp. 155–158.

[113] *Proceedings of the Iowa State Bar Association*, Vol. XV (1909), pp. 138–148, Vol. XVI (1910), pp. 182-193, Vol. XX (1914), p. 185.

to present to the next legislature for the purpose of providing such proposed jury commission in counties having cities of ten thousand or more people. A very complete report with a draft of the bill and memoranda of facts in support thereof was submitted and approved in 1915, and by action of the Association the committee was continued and enlarged so as to include one member from each congressional district of Iowa. In 1916 the Association tabled a proposal to recommend "that the selection of jurors be by a Commission appointed by the Judges of the District Court, which Commission shall be non-partisan, and the appointment of such Commission, or any of them, shall be subject to revocation at any time without cause assigned."[114]

The Special Committee on the Selection of Jurors reported in 1917 that a bill in accordance with the instructions of the Bar Association had been prepared and presented in the Thirty-seventh General Assembly and had been enacted into law with the amendment that it was applicable to any county having a city of fifteen thousand or more people. The law has since been modified by making it applicable to each county having situated therein a city with a population of fourteen thousand or more.[115]

In 1915 the Association recommended to the next General Assembly the enactment of a statute providing that in counties having a population of less than 25,000 the grand jury should be required to appear only at the first term of court for the year, and not at subsequent terms for that year unless ordered so to do by the court or judge.[116]

[114] *Proceedings of the Iowa State Bar Association,* Vol. XX (1914), pp. 181–185, 186, Vol. XXI (1915), pp. 174–191, Vol. XXII (1916), pp. 217, 227.

[115] *Proceedings of the Iowa State Bar Association,* Vol. XXIII (1917), pp. 69, 70; *Laws of Iowa,* 1917, Ch. 267; *Code of 1924,* Sec. 10849.

[116] *Proceedings of the Iowa State Bar Association,* Vol. XXI (1915), pp. 223, 225.

For the purpose of obtaining uniformity of procedure in impaneling the jury a plan already pursued in many districts was recommended by the Association. This read as follows: "that the present method of exercising peremptory challenges results in many mistrials because of the fact that the last man drawn is not an impartial juror, and yet may not be disqualified under the statute. We believe that at least sixteen jurors should be drawn, and that all peremptory challenges should be exercised with sixteen men in the box, and that after each side has exercised three challenges, then that each side should strike the names of two jurors, leaving the twelve trial jurors remaining." This plan was first proposed in 1906 and after vigorous discussion its further consideration was postponed until 1907 when it was indorsed by the Association. It was again indorsed in 1916.[117]

In 1913 the Association referred back to the Committee on Law Reform for report the next year a proposal that requests for instructions to the jury must be submitted to the court before argument of counsel begins, that all exceptions to instructions given or refused must be taken before they are read to the jury and that no exception unless so taken will be considered on a motion for a new trial, or by the Supreme Court, although the General Assembly had enacted a law in line with this recommendation at its preceding session. A proposal to repeal this measure was presented to the Bar Association at its 1914 meeting but was tabled after discussion.[118]

In 1920 upon consideration of the report on Code Commissioners' Bill No. 232, relating to instructions to juries,

[117] *Proceedings of the Iowa State Bar Association*, Vol. XII (1906), pp. 79, 81-88, Vol. XIII (1907), pp. 74-76, Vol. XXII (1916), pp. 217, 222.

[118] *Proceedings of the Iowa State Bar Association*, Vol. XIX (1913), pp. 221, 222, 229, 230, Vol. XX (1914), pp. 186, 187–201; *Laws of Iowa*, 1913, Ch. 289.

the recommendation of the committee in support of this bill was laid on the table. A motion was carried declaring "that it is the sense of this Association that we do not favor the reading of instructions to juries before the arguments of attorneys." In 1923 indefinite postponement was voted on the question, "Should a law be enacted providing that the instructions to the jury shall be read before arguments are made in the case?" The Code Commissioners' bill was not passed, but the Fortieth General Assembly enacted a revision of the Code sections relating to instructions which is in general similar to the former provisions of the law. The Association, in 1924, rejected a proposal favoring the restoration of the law which required judges to submit the instructions to the attorneys before argument in all cases in which written instructions are required, having previously by amendment stricken out a clause requiring all objections to be made before the instructions are read.[119]

The Association in 1924 rejected a proposal that the law be so amended as to permit the trial judge to instruct juries orally, at his option, in all civil cases wherein the amount in controversy does not exceed three hundred dollars. A similar proposal was included among those tabled in 1916. The Association also rejected a proposal submitted to it in 1925 that when motion to direct a verdict is made the court may in its discretion order the case submitted to the jury, that if the verdict is returned against the moving party and the court is of the opinion that the motion to direct should have been sustained the court may then set aside the verdict, sustain the motion and enter judgment

[119] *Proceedings of the Iowa State Bar Association*, Vol. XXVI (1920), pp. 89, 112-122, Vol. XXIX (1923), pp. 120, 132–134, Vol. XXX (1924), pp. 125, 127; *Compiled Code of 1919*, Secs. 7500–7505; *Laws of Iowa*, 1923, Ch. 268; *Code of 1924*, Secs. 11491–11495.

as if directed verdict had been returned, that the Supreme Court may on appeal remand the cause with instructions for the entry of such verdict and final judgment as it shall determine should have been entered.[120]

A proposal that trial judges be empowered to limit the time to be used by counsel in argument to the jury in all civil cases was rejected. Later a proposal that the court should have the power to limit the argument of counsel to the jury subject to review for abuse of discretion was tabled. It was also recommended that the legislature should enact laws empowering the trial court to limit argument of counsel in jury cases, provided that in no case the argument for each side should be limited to less than one hour, that in the more important civil cases and in all criminal cases the limitation should not be less than three hours to a side, and in criminal cases involving a death penalty or life imprisonment no limitation should be made. The Association rejected this proposal by a tie vote.[121]

"Ought the court to have the power to advise the jury as to credibility and weight of the testimony as is done by the circuit and district judges in the United States courts?" Upon discussion of this question the Iowa Bar Association voted in the negative. At a later session the Association tabled the proposition that the judge after the close of the evidence and the argument of counsel may express to the jury his judicial view as to the credibility or weight of the evidence or any part of it. A similar proposal relating to written instructions of judges to juries in criminal cases was rejected in 1925.[122]

[120] *Proceedings of the Iowa State Bar Association,* Vol. XXII (1916), pp. 215, 227, Vol. XXX (1924), p. 122, Vol. XXXI (1925), pp. 98–113.

[121] *Proceedings of the Iowa State Bar Association,* Vol. VII (1901), pp. 108, 218, Vol. XI (1905), pp. 58, 61, 71, Vol. XVIII (1912), pp. 145, 184–186.

[122] *Proceedings of the Iowa State Bar Association,* Vol. XI (1905), pp. 58, 61–71, Vol. XXIII (1917), pp. 52, 66, Vol. XXXI (1925), p. 116.

Three times a proposal has been submitted to the Association that it should recommend that legal provision be made for a jury verdict of less than twelve in the trial of civil cases, but each time the proposal has been defeated after discussion. The last proposal was for a three-fourths verdict in all civil cases wherein the amount in controversy does not exceed five hundred dollars and in criminal cases when the penalty is less than life imprisonment, such verdict not to be accepted by the court until the jury shall have deliberated not less than ten hours.[123]

Indorsement was given to the recommendation of the Law Reform Committee that the Bar Association express its disapproval of the practice of trial judges of absenting themselves from the court room during the argument of counsel to the jury, leaving no one to settle the disputes that may arise, no one to act when complaints are made by opposing counsel, and no adequate means of preserving in the record errors that may arise from such argument or other misconduct of counsel. It was further recommended by the Association that the General Assembly be asked to so amend the law procedure as to prohibit trial judges from such practice, except by the consent of counsel for both parties.[124]

The Association tabled the proposal that it recommend to the next General Assembly the enactment of a law providing that boards of supervisors in all counties of the State shall be required to provide comfortable and adequate sleeping quarters for the accommodation of juries during their deliberations. It has twice rejected the proposal

[123] *Proceedings of the Iowa State Bar Association,* Vol. VI (1900), pp. 56, 57–75, Vol. VII (1901), pp. 108, 201–217, Vol. XVIII (1912), pp. 145, 187–192.

[124] *Proceedings of the Iowa State Bar Association,* Vol. III (1897), pp. 68-75.

that trial courts be authorized by statute to permit a jury to adjourn and separate without being in charge of an officer, after a cause has been submitted to it and before reaching a verdict, and then to reconvene for further deliberation. It postponed consideration of the question as to whether the actual jury fee in a case should be taxed to the losing litigant.[125]

THE SUPREME COURT

The lawyers of Iowa have been interested in the consideration of many proposed changes affecting the Supreme Court and its procedure. These proposals have extended over a wide range of matters, including practically all of the important questions on the subject which at various times during the period have been discussed in the forum of the public press and periodicals of the country, as well as many other questions of more technical interest to the practitioner of the law.

Various proposals have been submitted for the regulation of the court, its judges, and their functions. Thus the Association indorsed proposals that judges of the Supreme Court be required by law to make Des Moines their permanent place of residence during their official terms of office; that their salaries be $6000 per annum; that there be but one term of the Supreme Court lasting from September to June with a short recess at the holiday season; that a certain number of causes be assigned for submission and oral argument for a certain number of days, and that after such submissions are taken the court shall take a recess for such time as may be necessary to prepare and file opinions in such submitted causes, and that this

[125] *Proceedings of the Iowa State Bar Association*, Vol. XXI (1915), pp. 223, 225, Vol. XXVII (1921), pp. 98, 103–112, Vol. XXIX (1923), pp. 120, 134, Vol. XXXI (1925), pp. 114–116.

method of alternating procedure be followed during the entire term or until all the assigned causes which may be ready for submission are disposed of.[126]

It was previously recommended that the law require each Judge of the Supreme Court to read in full all the record, abstracts, and arguments in cases to be decided by the court; that in order that the best results from oral arguments may be attained, that in all cases noticed for oral argument a few cases be assigned for hearing, and when heard, recess or adjournment be taken for such time as will enable immediate examination in order to determine and write opinions, and then ordering another assignment and like hearing until all the causes are determined. The Association recommended that opinions be not required to be written in all cases, but that they should be written only in cases reversed; and that in causes affirmed or modified only such opinions should be written as in the judgment of the Judges of the Supreme Court present such questions and rulings as warrant written opinions, and other cases to require only an entry of such affirmance or modification on the proper docket or record.[127]

The Association recommended that the Judges of the Supreme Court have the sole supervision and control of the preparation and publication of the Iowa Reports, including the letting of all contracts for printing thereof and the enforcement of such contracts. This recommendation was adopted after an amendment was passed excluding from it the provision that the Reporter of the Supreme Court should conform to the requirements of the Judges relative to the preparation of manuscript for such reports

[126] *Proceedings of the Iowa State Bar Association,* Vol. VII (1901), pp. 108, 217, 218.

[127] *Proceedings of the Iowa State Bar Association,* Vol. II (1896), pp. 126–128, 131, 132.

under penalty of suspension of his salary at their discretion. At the next annual meeting the Bar Association recommended that the statutes be so amended as to give to the Judges of the Supreme Court the power of appointment and removal of the Supreme Court Reporter, and to give to them the sole supervision and control of the preparation and publication of the Iowa Reports, including the letting of all contracts for printing and their enforcement.[128]

In 1910 the Association recommended that the Clerk and the Reporter of the Supreme Court should be appointed by the court and not elected by the people. The Thirty-fifth General Assembly of Iowa enacted a law providing for the appointment of the Clerk and Reporter of the Supreme Court by the members of such court and fixing the terms of such appointive officers at four years each. In 1916 the Association tabled the proposal that only those opinions of the Supreme Court of Iowa should be published as the judges of such court should deem of sufficient importance to be included in the official reports.[129]

The Association recommended that the rules of the Supreme Court be changed requiring the argument for the appellant to be served at least sixty days prior to the term at which the case is to be heard and the argument of the appellee to be filed fifteen days before the case is to be heard. Later it recommended that the appellant be required to file his brief at least sixty days before the hearing, that the appellee should have thirty days to prepare and file his argument, and then that the appellant should have ten days to file his reply. It further recommended that in view of the great increase in the number of oral arguments in

[128] *Proceedings of the Iowa State Bar Association*, Vol. VII (1901), pp. 108, 220–227, Vol. VIII, (1902), pp. 87, 88.

[129] *Proceedings of the Iowa State Bar Association*, Vol. XVI (1910), p. 162, Vol. XXII (1916), pp. 215, 227; *Laws of Iowa*, 1913, Ch. 106; *Code of 1924*, Secs. 154, 12817.

the submission of cases to the Supreme Court, a rule should be adopted permitting the court to fix the time for each particular case, which in no event should be less than thirty minutes to each side. It rejected the proposal that the rules of the Supreme Court be changed permitting the court to assign a petition for rehearing at any period after it is filed.[130]

The Association has fostered measures for the relief of the burden imposed upon the Supreme Court. In 1900 it recommended legislation providing for the establishment of an independent appellate court of final jurisdiction in order that the Supreme Court might be relieved from the large number of appeals taken to it. The enormous magnitude of the work imposed upon the Supreme Court was effectively shown in an interesting paper presented before the Association in 1903, entitled, "Submissions to the Supreme Court under the New Statute", by F. F. Dawley, of Cedar Rapids. Following this the Association adopted a resolution offered by Judge Towner providing for the appointment of a committee to confer with the Supreme Court and to present and recommend to the legislature such modifications or new provisions as may be necessary to conform the practice to the reorganization of the Supreme Court.[131]

In 1910 the question of relief for the Supreme Court was referred to the Committee on Law Reform with the request that it consider the several suggestions, report a bill, and make recommendations to the Association. This committee was given charge of presenting to the legislature a recommendation of the Association that legislation be en-

[130] *Proceedings of the Iowa State Bar Association,* Vol. XIII (1907), p. 95, Vol. XV (1909), p. 147, Vol. XVI (1910), pp. 144, 145–153.

[131] *Proceedings of the Iowa State Bar Association,* Vol. VI (1900), pp. 56, 150, Vol. IX (1903), pp. 76, 182–204.

acted cutting off appeal in all cases of misdemeanor not indictable and granting only writs of error in all civil cases where the amount in controversy is three hundred dollars or less. In the 1912 session the Association adopted a recommendation that the Committee on Law Reform be authorized and directed to prepare or cause to be prepared a bill to be submitted to the next General Assembly providing for an increase in the number of Supreme Judges to be not less than nine. The General Assembly in 1913 provided by statute for an increase in the number of Supreme Court Judges so that the number should consist of seven.[132]

APPEALS TO THE SUPREME COURT

In no other subject of professional concern are lawyers more interested than in questions of proposed reforms in various matters of procedure and methods relating to appeals to the Supreme Court. The question of the time in which appeals should be taken has often arisen. At four sessions the Association recommended that in criminal cases the appeal to the Supreme Court must be perfected within six months from the date of the rendition of the judgment in the lower court. Then it recommended that the time for taking appeals in all cases should be limited to ninety days after the entry of judgment or order appealed from, and later, that the time for taking an appeal from the district court to the Supreme Court should be reduced to two months. Again, in 1921, the proposal that appeals to the Supreme Court should be taken within three months from the date of judgment or decree was adopted by the Association. A bill to that effect was presented in the

[132] *Proceedings of the Iowa State Bar Association*, Vol. XVI (1910), pp. 34, 35, 181, 182, Vol. XVII (1911), pp. 123, 187–189, Vol. XVIII (1912), pp. 144, 149–154; *Laws of Iowa*, 1913, Ch. 22; *Code of 1924*, Sec. 12801.

Fortieth General Assembly and there defeated in so far as civil appeals are concerned, but a law was enacted that an appeal in criminal cases must be taken within sixty days. The General Assembly at its extra session, however, enacted a law that appeals from the district, superior, and municipal courts in civil actions must be taken to the Supreme Court within four months from the date of the entry of record of the judgment or order appealed from.[133]

The question of amendment of the law limiting the class of cases and the minimum amount involved for which an appeal may be taken has likewise engaged the attention of the Association. In 1910 it recommended legislation to exclude from appeal all cases of misdemeanor not indictable and writs of error in all civil cases where the amount in controversy is three hundred dollars or less. In 1921 it recommended that the statute be amended so that no appeals in civil action could be taken to the Supreme Court if the amount involved is less than five hundred dollars, without the certificate of the district court. The ensuing legislature, however, made no change in the amount.[134]

The Association has sought to secure an amendment of the manner of service of the notice of appeal as provided in Section 4115 of the *Code of 1897*. It recommended a proposal that "A notice of appeal shall be served and return made thereon in the same manner as an original notice in a civil action, and filed in the office of the Clerk in which the judgment or order appealed from was render-

[133] *Proceedings of the Iowa State Bar Association*, Vol. IX (1903), pp. 60, 63, 64, Vol. XII (1906), pp. 79, 81, Vol. XIII (1907), pp. 69, 71–73, Vol. XIV (1908), p. 105, Vol. XXII (1916), pp. 215, 226, Vol. XXIII (1917), pp. 51, 53, 54, 55, Vol. XXV (1919), pp. 71, 73, 99, 124, Vol. XXIX (1923), p. 115, Vol. XXX (1924), p. 148; *Laws of Iowa*, 1923, Ch. 222; *Code of 1924*, Sec. 12832.

[134] *Proceedings of the Iowa State Bar Association*, Vol. XVI (1910), p. 182, Vol. XXVII (1921), pp. 99, 124, 125, Vol. XXIX (1923), p. 115, Vol. XXX (1924), p. 148.

ed or made, except that as to parties who have made no appearance, or appearance for whom has been withdrawn, or in whose behalf there is filed no claim or defense in respect to the subject matter of the action of the lower court appealed from, the service of the notice of appeal on the clerk of the court below and the filing of the same in his office shall constitute sufficient service. All other notices connected with or growing out of the appeal shall be served and the return made in like manner, and filed in the office of the Clerk of the Supreme Court, and all notices provided for in this section become a part of the record in the case on being filed." The purpose of this recommendation was to obviate the expense, difficulty, and delay caused in the serving with notice in the manner required for the service of an original notice parties appearing on the record as adverse but really having no interest in the issue or in the question to be presented to the Supreme Court. Moreover, the technical dangers to the appeal under such requirements are considerable. Formal service of notice upon such parties seemed useless. The exception provided in the proposed amendment is designed to take care of all these difficulties.[135]

The Association rejected the proposal that the statute in relation to taxing costs should be amended so that all costs of appeal to the Supreme Court should follow the case and be taxed against the unsuccessful party on final judgment.[136]

The Association recommended that there be some statutory provision for certifying the record on appeal in the case of death, disability, resignation, or expiration of the

[135] *Proceedings of the Iowa State Bar Association,* Vol. XXX (1924), pp. 129–132, Vol. XXXI (1925), pp. 95, 96, 117, 118.

[136] *Proceedings of the Iowa State Bar Association,* Vol. VI (1900), pp. 56, 151, 152.

term of office of the trial judge before his certificate is made for bills of exception and other certification of the record. It also adopted the following recommendation: "For the purpose of an appeal, the date of judgment or decree as the same appears in the records of the district court, will be conclusive evidence that such judgment or decree was entered of record on such date." At two annual sessions the Association recommended that the law should be changed so as to require an abstract to be filed in the Supreme Court and the cause docketed within three months after the appeal is perfected, unless upon written application to the court or one of its judges the time for filing the abstract should be extended. The same proposal was indefinitely postponed at a later session, while there was unanimous rejection of the proposal that the law be amended so as to require an abstract of record on appeal to be filed by appellant thirty days before the first term after appeal. The proposal that the appellant should be required to set out in his abstract of record the errors relied upon for reversal was also rejected.[137]

In 1921 the Association recommended that a statute be enacted providing that on appeals to the Supreme Court no printed abstracts be required, but that the appellant must file with the clerk of the Supreme Court the transcript in the case and that each party must state in the printed argument so much of the record only as is necessary to present the questions raised on appeal. A similar

[137] *Proceedings of the Iowa State Bar Association*, Vol. II (1896), pp. 128, 129, 132, Vol. XII (1906), pp. 78, 80, 81, Vol. XIII (1907), pp. 69–71, Vol. XIV (1908), pp. 104, 105, 106, 166, Vol. XXVIII (1922), pp. 89, 101, 103–108; *Code of 1897*, Sec 4120; *Code of 1924*, Sec. 12848.

The recommendation that the district court record of the judgment or decree will be conclusive evidence as to the date of record was made with reference to the decision of the Iowa Supreme Court in Hoffman *v.* Stark, 108 N. W. 329; Thompson *v.* Association, 114 N. W. 31.

proposal was not adopted in 1924, but was referred to a special committee for investigation and report. Upon conferring with the judiciary committees of the legislature, the committee found it inadvisable to present the matter to the legislature. In 1925 the Association recommended the amending of the laws or rules governing appeal by the defendant in a criminal case so that if he is financially unable to submit printed abstract and argument the court may permit him to submit his case upon the transcript and typewritten argument. However, it appears that under Rule 33 of the Supreme Court that practice is already permitted.[138]

In 1924 the proposal was submitted to the Association that Code Section 3749 be amended so that appeals in all legal actions may be determined without a transcript of any part of the record in cases wherein the court certifies the questions to be determined on the appeal. This was designed as an expeditious and inexpensive way of presenting questions to the Supreme Court where the case turns on one or two points that may be simply stated by the trial judge in the brief certificate given by him in this class of cases. The whole matter was referred to a special committee to prepare a bill therefor for the further consideration of the Association.[139]

The question of technical error as a basis for the reversal of judgments of lower courts by the Supreme Court bulks very large in the literature concerning law reform and at several times proposals relating to the matter have received the attention of the Iowa Bar Association. A proposal was offered in 1904 asking that a statute be enact-

[138] *Proceedings of the Iowa State Bar Association*, Vol. XXVII (1921), pp. 99, 126, 127, Vol. XXIX (1923), p. 116, Vol. XXX (1924), pp. 117–122, 149 (5), Vol. XXXI (1925), pp. 116, 117, 118.

[139] *Proceedings of the Iowa State Bar Association*, Vol. XXX (1924), pp. 115–117; *Code of 1897*, Sec. 3749; *Code of 1924*, Secs. 11536–11541.

ed directing the Supreme Court not to reverse any case, civil or criminal, because of any technical error unless the record discloses that such error might have changed the judgment of the trial court. The consideration of this proposal was postponed until the next year, but it was not then submitted. In 1909 a proposal suggested a law that no judgment should be set aside or reversed or a new trial granted on appeal in any cause, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for any error as to any other matter of pleading or procedure, unless in the opinion of the appellate tribunal, prejudice is affirmatively shown or the court finds that the error complained of has resulted in a miscarriage of justice. After discussion the proposal was referred to the Committee on Law Reform for further consideration and report the next year. A similar proposal was presented to the Association in 1910 and it was also referred to the Committee on Law Reform for report to the next annual meeting of the Association. A similar proposal was presented in 1911 and rejected.[140]

Proposals favoring a similar law were submitted in 1912 and 1913 and were laid upon the table. The Iowa law, however, already provides that in both criminal and civil cases the Supreme Court must examine the record, without regard to technical errors or defects which do not affect the substantial rights of the parties, and render such judgment on the record as the law demands. In criminal cases it may affirm, reverse, or modify the judgment, or render such judgment as the district court should have done, or order a new trial, or reduce the punishment, but can not increase it. The Iowa law further provides that no exception shall

140 *Proceedings of the Iowa State Bar Association,* Vol. X (1904), pp. 60–97, Vol. XV (1909), pp. 135–138, Vol. XVI (1910), pp. 162–166, 193, Vol. XVII (1911), pp. 123–155.

be regarded in the Supreme Court unless the ruling has been on a material point, and the effect thereof prejudicial to the rights of the party excepting.[141]

In 1917 the following proposal was submitted to the Association: "When the Trial Judge in ruling upon the admission or exclusion of evidence correctly states the rule of law, but in the exercise of his discretion holds that the strict application of such rule to that particular offer of evidence would work an injustice, such ruling shall not be considered on appeal as reversible error." This proposal was vigorously opposed on the ground of the uncertainty with which it would affect the rules of evidence, Wm. Mulvaney remarking, "It is beneath the dignity of lawyers to talk about technicalities; there are no technicalities about the rules of evidence that are not founded on principle." The proposal was laid on the table.[142]

NOMINATIONS AND ELECTIONS

As early as 1901 the Iowa Bar Association recommended "the adoption of a safe, judicious and efficient primary election law." The law establishing primary elections was passed by the Thirty-second General Assembly in 1907. Legislation in behalf of regulation of elections was indorsed by the Association in the following words: "We recommend the passage of a law which shall make it a misdemeanor for any person or committee to, directly or indirectly solicit from any employee appointed by the authority of the state, a gift or donation of any money or other thing of value for any political purpose whatsoever, and

[141] *Proceedings of the Iowa State Bar Association*, Vol. XVIII (1912), pp. 144–148, Vol. XIX (1913), pp. 220, 223; *Code of 1897*, Secs. 3601, 3754, 5462; *Code of 1924*, Secs. 11228, 11548, 14010.

[142] *Proceedings of the Iowa State Bar Association*, Vol. XXII (1916), pp. 217, 227, Vol. XXIII (1917), pp. 52, 67, 68.

providing that any such employe so giving money or anything of value, and the person receiving the same, shall be deemed guilty of a misdemeanor and punishable accordingly, and that the conviction of any such employee of such offense shall at once work a forfeiture of his position.''[143]

The Thirty-fifth General Assembly in 1913 passed the act for the non-partisan nomination and election of judges. A proposal for this method had been submitted to the Association at its session the preceding year, but no action had been taken thereon. After this method had been enacted into law, there was twice submitted to the Association the proposal that it recommend to the General Assembly the enactment of a statute changing the legal method for the nomination of Supreme and district judges and providing for an increase in the tenure of office. This proposition was passed by without action the first time, and on its second presentation was laid on the table.

In his address before the Association in 1914, President F. F. Dawley denounced the judicial primary law enacted in 1913 as a statute for the encouragement and assistance of incompetent candidates for the bench. He said: ''Men who would not have dreamed of presenting themselves to any judicial convention we ever had, and asking for a nomination, have pushed themselves in and obtained nominations under this law . . . . the law enables the most unfit and the most brazen to lay unholy hands on the judicial ermine, and it threatens to degrade our Courts.'' The law for the non-partisan nomination and election of judges was repealed by the Thirty-eighth General Assembly in 1919 and nomination by judicial convention was adopted.[144]

[143] *Proceedings of the Iowa State Bar Association,* Vol. VI (1900), pp. 56, 162, 163, Vol. VII (1901), pp. 108, 220; *Laws of Iowa,* 1907, Ch. 51.

[144] *Proceedings of the Iowa State Bar Association,* Vol. XVIII (1912), pp. 145, 194–196, Vol. XX (1914), pp. 178, 186, 202, Vol. XXI (1915), pp. 223, 225; *Laws of Iowa,* 1913, Ch. 104, 1919, Ch. 63.

MUNICIPAL GOVERNMENT

Certain proposals relating to municipal government have claimed consideration. The Association in 1901 made the following recommendations: that each city be made a civil township; that contractors' bonds given to cities be conditioned for the benefit of material men and laborers, a provision since enacted into law by the Thirty-eighth General Assembly; that after the bids are opened city councils have the liberty of determination as to the materials to be used for paving; for more liberty to cities of the second class in relation to the purchase of waterworks. The proposal for the appointment of waterworks trustees by the mayor instead of by the courts was rejected. The vote of rejection was in response to strong appeals to keep the appointment of trustees for waterworks out of politics.[145]

A proposal relating to municipal government was submitted at the session of the Association in 1903, and its consideration was postponed until the next regular session.[146] In 1904 it was accordingly resubmitted and adopted as a recommendation of the Association as follows:

> That the municipal government of cities of Iowa should be vested in a council of three aldermen, whose term of office should be three years, after the first council the members of which should serve respectively one, two and three years, to be determined by lot; thereafter one alderman to be elected annually; such aldermen in all cases to be elected by a vote of the whole city, and vacancies to be filled by special elections, such councils to be vested with all the present powers of city councils, and to elect one of their number as mayor to exercise all the duties of mayor, as defined by law; such aldermen to be paid from two thousand to five thousand dol-

[145] *Proceedings of the Iowa State Bar Association,* Vol. VII (1901), pp. 116, 120, 131, 132–134; *Laws of Iowa,* 1919, Ch. 347; *Code of 1924,* Secs. 10304, 10319–10323.

[146] *Proceedings of the Iowa State Bar Association,* Vol. IX (1903), pp. 60, 61, 64, 179.

lars per year depending upon the class of the city, with additional compensation to the mayor; all to be fixed by law; the said aldermen and mayor to devote their entire time to the discharge of their duties. "That the statutes of Iowa should be amended accordingly".

The Association by this recommendation anticipated the commission plan of city government, first legally established in Iowa in the "Des Moines plan" in 1907.[147]

SOCIAL REGULATION PROPOSITIONS

Among the propositions for recommendation to the legislature which have been submitted to the Iowa Bar Association, there have been many relating to the regulation by law of various social questions. The Association in 1905 adopted a report recommending the appointment of a committee to coöperate with others relative to the matter of proper amendments to the juvenile court law. The next year this committee submitted a very full report to the Association recommending that the Bar Association express its approval of the purposes and objects to be attained by juvenile courts and pledging support in all legislation for perfecting and enacting laws giving jurisdiction and adequate procedure to control juvenile offenders. This report was adopted by the Association. Since then the Iowa juvenile court acts have been progressively amended and improved.[148]

A resolution against the proposed child labor amendment to the Federal Constitution was introduced before

147 *Proceedings of the Iowa State Bar Association,* Vol. IX (1903), pp. 60, 61, 64, 179, Vol. X (1904), pp. 59, 60, 98, 129–134; *Laws of Iowa,* 1907, Ch. 48; Shambaugh's *Commission Government in Iowa: The Des Moines Plan* in *The Annals of the American Academy of Political and Social Science,* Vol. XXXVIII, p. 30.

148 *Proceedings of the Iowa State Bar Association,* Vol. XI (1905), pp. 145, 146, Vol. XII (1906), pp. 144–150; *Laws of Iowa,* 1904, Ch. 11; *Supplement to the Code of Iowa, 1913,* Title III, Ch. 5-B; *Code of 1924,* Secs. 3605–3684.

the Association, the proposed resolution instructing the legislative committee of the Association to use every effort to prevent ratification of such child labor amendment by the legislature. This resolution was laid on the table. In the Forty-first General Assembly, the House indefinitely postponed consideration of the proposed child labor amendment.[149]

A proposal recommending the adoption of an employers' liability law and a workingmen's compensation act was brought before the Association, and at the same session Governor John Burke, of North Dakota, gave an address on the subject, "Employers' Liability and Workingmen's Compensation Acts." Due to lack of time for consideration, the matter was postponed until the next annual meeting. The ensuing legislature of Iowa enacted an Employers' Liability and Workingmen's Compensation Act.[150]

The Association twice unanimously adopted the proposal recommending legislation imposing penalties upon a married man for desertion and failure to support his family without just cause. This proposal was enacted into law by the Thirty-second General Assembly.[151]

The question of regulation of marriage has come before the Association for consideration. In 1902 it recommended the appointment of a committee to consider the matter of limiting the propagation of species by persons of feeble mind. After vigorous discussion a resolution was adopted in 1903 expressing the Association's approval of such changes to be made in the law as should prevent the mar-

[149] *Proceedings of the Iowa State Bar Association,* Vol. XXX (1924), pp. 202–205; *Journal of the House of Representatives,* 1925, p. 591.

[150] *Proceedings of the Iowa State Bar Association,* Vol. XVII (1911), pp. 123, 156–183, 186, 187; *Laws of Iowa,* 1913, Ch. 147.

[151] *Proceedings of the Iowa State Bar Association,* Vol. VI (1900), pp. 56, 57, Vol. XII (1906), pp. 79, 81, Vol. XIII (1907), p. 68; *Laws of Iowa,* 1907, Ch. 170.

riage of persons morally, mentally, or physically degenerate. Certain proposals were referred back to the Committee on Law Reform to be reported on the next year, to the effect that the clerk of the district court be prohibited by law from issuing a marriage license permitting the marriage of any person known to him or whom he has reasonable grounds to believe to be of weak or unsound mind, subject to such person's right of appeal to the district court, and proposing a penalty to be imposed upon any person who aids in procuring the marriage of any such person. Accordingly in 1904 the committee reported to the Association for its consideration a proposed act regulating marriage and prohibiting marriage by or with persons afflicted with imbecility, feeble-mindedness, epilepsy, or insanity and prescribing penalties to be imposed upon persons violating its provisions. The proposed act was similar to the provisions of the Minnesota law. It was vigorously discussed, amended, and finally adopted by the Association. The Fortieth General Assembly at its extra session enacted a prohibition upon the granting of a marriage license where either party is an idiot, imbecile, insane, or under guardianship as an incompetent. In 1925 provision was made to furnish each clerk of the district court with a list of persons to whom marriage licenses should not be issued.[152]

Several propositions pertaining to the regulation of divorce procedure have come before the Association. It has four times adopted a proposal to the effect that the testimony in every action for divorce, whether contested or not, shall be taken down by the official shorthand reporter and his notes shall be duly certified, filed, and made of record in the case. Even in the absence of legislation it has been the

[152] *Proceedings of the Iowa State Bar Association*, Vol. VIII (1902), pp. 87, 88, 89, Vol. IX (1903), pp. 61, 64–71, 171, Vol. X (1904), pp. 61–66, 92, 93; *Code of 1924*, Sec. 10429 (5); *Laws of Iowa*, 1925, Ch. 187.

custom in many districts of the State to have the shorthand reporter take down the oral evidence in every divorce case and to certify and file the notes of record.[153]

Measures have been proposed for the prevention of easily secured divorces. The Association recommended that the legislature should pass an act providing for the appearance of an attorney on the part of the State in every divorce case wherein a decree may be taken by default. However a later proposal that the court must appoint an attorney to investigate on behalf of the State and report to the court in every uncontested divorce case, with an attorney fee to be taxed as costs in the case, was laid on the table. A subsequent proposal for legislative enactment of a measure whereby an inquiry in respect to the merits of plaintiff's claim in uncontested divorce cases may be judicially made, to the end that loose and easy divorces, and those without merit may be prevented, was adopted in 1915. The Association rejected a proposal that a preliminary decree should be entered in divorce proceedings, either granting or refusing a divorce, such decree not to be operative until confirmed by a final decree to be entered six months from the date of the preliminary decree. The statute prohibits remarriage of either party divorced within a year from the filing of the divorce decree, except to each other, unless permission be granted for remarriage in the decree. The larger aim of the law reform activities of the bar is not directed toward the solution of either social or economic problems in general, but primarily toward the reform of the law facilitating the improvement of the administration of justice and equity. However, the bar has devoted considerable attention toward the proper regulation by law

[153] *Proceedings of the Iowa State Bar Association*, Vol. XII (1906), pp. 79, 92, 93, 94, 163–171, Vol. XIII (1907), pp. 69, 74, Vol. XIV (1908), p. 105, Vol. XVI (1910), pp. 133, 134–140.

of some phases of large public concern in various socio-economic matters.[154]

ECONOMIC PROPOSITIONS

Occasionally consideration is given by the Association to proposed measures of reform relating to problems of an economic nature. Such consideration is, in general, given only to such economic questions as affect the public interest and welfare. The Association unanimously recommended that the legislature enact forthwith a public utility commission law. While no public utility commission has been created for the State, the Iowa law gives cities and towns very extensive powers in relation to the regulation of heating plants, waterworks, gasworks, and electric light or power plants, including the regulation of rates and service.[155]

After vigorous discussion in which the Association expressed by vote its stand in favor of considering questions "to promote reform in the law" in a broad sense without limitation and not to be confined to proposals affecting methods of procedure, administration, and practice of law, a recommendation to the legislature regarding banking was adopted. This recommendation was that the legislature should provide by law that all private banks doing business in the State of Iowa should be subject to the same examination and control as State and savings banks. Its adoption after strong opposition was a culmination of a struggle beginning at the preceding session in which a similar proposal had been submitted and referred back to the Com-

[154] *Proceedings of the Iowa State Bar Association,* Vol. XV (1909), pp. 125–133, Vol. XVI (1910), pp. 134, 140–144, Vol. XIX (1913), pp. 221, 230, Vol. XX (1914), pp. 186, 202, Vol. XXI (1915), pp. 223, 225, Vol. XXVIII (1922), pp. 89, 91–93; *Code of 1924,* Sec. 10484.

[155] *Proceedings of the Iowa State Bar Association,* Vol. XXIV (1918), pp. 89, 91–98; *Code of 1924,* Secs. 6127–6143.

mittee on Law Reform. In harmony with the object of the recommendation, although not going to its extent, the Thirty-eighth General Assembly enacted a law prohibiting any additional private banks.[156]

Considerable discussion formerly prevailed relating to the question of the enforceable financial responsibility of fidelity bonding companies. In 1906 the following recommendation was adopted: "That it is the sense of this association that we should have adequate legislation providing for a deposit of money by corporations or bonding companies tendering surety bonds, which shall be held by the auditor of state subject to execution upon judgments rendered in this state."[157]

The question is agitated from time to time as to whether too large release from financial obligation is afforded by the Iowa laws of homestead rights and personal property exemptions. In reference to the matter of sale of real property for taxes, the Association recommended an amendment to the law providing that in all cases wherein the homestead is listed separately as a homestead, it should be liable only for that part of the taxes on it separately. The proposal was tabled that our statutory homestead and personal property exemptions from execution be changed from the present quantity measure to a value measure. A proposal that the law now exempting wages from execution be amended so as to allow a certain per cent of his wages to be taken in payment for necessities supplied to the debtor's family was rejected.[158]

[156] *Proceedings of the Iowa State Bar Association*, Vol. XIV (1908), pp. 106–109, 162–165, 167, 168, Vol. XV (1909), pp. 125–133; *Laws of Iowa*, 1919, Ch. 236; Preston's *History of Banking in Iowa*, pp. 163–168.

[157] *Proceedings of the Iowa State Bar Association*, Vol. XII (1906), pp. 113–118.

[158] *Proceedings of the Iowa State Bar Association*, Vol. IX (1903), pp. 60, 63, Vol. XI (1905), pp. 58, 60, 71, Vol. XXVIII (1922), pp. 117, 118; *Code of 1897*, Sec. 1423; *Code of 1924*, Sec. 7253.

The Torrens system of land transfers was considered in 1895 in the report of the Special Judicial Committee in the first session of the Iowa Bar Association, but further consideration of the report was deferred for the session. In 1913 a special committee was created to report at the next annual meeting upon the Torrens land system, or other similar systems of land titles, in order to simplify and make less expensive the transfer of land titles. A committee was appointed, headed by O. P. Myers, of Newton.[159] In 1914 Mr. Myers presented before the Association the report of the committee in a paper entitled, "The Torrens Land Title System", from which the following quotation is extracted:

> The Torrens Land Title System was first drafted into law about 1857, by Sir Robert Torrens, in Australia. It is in use in several British Colonies, including parts of Canada. In the language of the Supreme Court of Minnesota, "The basic principle of this system is the registration of the title of the land, instead of registering, as the old system requires, the evidence of such title. In the one case only the ultimate fact or conclusion that a certain named party has title to a particular tract of land is registered, and a certificate thereof delivered to him. In the other the entire evidence (deeds, mortgages, etc.) from which proposed purchasers must, at their peril, draw such conclusions, is registered."
>
> The essential feature of the Torrens System, therefore, appears to be the creation and recognition of an official, conclusive, indefeasible, registered certificate of title — under governmental guaranty.
>
> We will not refer to the workings of this system in foreign lands, because the many different constitutional questions arising in the United States would render such reference of little use. Under English Governments, it appears, they do not have specific constitutions to bother them; and most of their officers can act judicially or otherwise, apparently, without troubling themselves about differ-

[159] *Proceedings of the Iowa State Bar Association*, Vol. I (1895), p. 78, Vol. XIX (1913), pp. 171, 233, Vol. XX (1914), pp. 73–84.

ent departments, and with or without any notice or presence of parties; and their acts bind the whole world. But it is different with us.[160]

Mr. Myers presented the further report of the committee in three sections. The first section lists the main evils requiring remedy under our present land recording system. The second section deals with a brief description and application of the Americanized Torrens system stating the steps in the proceedings thereunder to be, in general, as follows: an application made by the owner to the court; examination of title by an official examiner; due notice given; trial had, decree, and certificate registered with right given of appeal; certificate prima facie within certain time, and thereafter conclusive as to all matters therein; subsequent transfers effected by bringing new deed and old certificate to registrar, who cancels the old and issues new certificate; a guaranty fund provided to indemnify losses. The third section of the committee's report makes concrete recommendations, prominent among which certain features are as follows: that abstracters should be bonded, and that their liability should run with the land; requirement of State supervision and examination of conveyancers, surveyors, abstracters, and recorders; official quieting title suit, wherein final decree, after due process and time limitations, should be indefeasible; thorough examination of the initial registration part of the Torrens statutes as suitable basis for such quieting title suit; and that the Association urge upon the attention of the General Assembly of Iowa the appointment of a commission to fully investigate the entire subject and to formulate a suitable bill with reference thereto. The report and the final recommendations of this committee providing for cer-

[160] *Proceedings of the Iowa State Bar Association*, Vol. XX (1914), pp. 74, 75.

tain changes in the laws concerning the recording of land titles were adopted by the Association.[161]

The committee to investigate the Torrens or other land title system further reported to the Association in 1915, calling attention to bills introduced in both houses of the Iowa legislature in behalf of a modified Torrens land title statute. These, however, did not become law, and the committee urged further activity of the Association in this direction and recommended the continuance of the committee for further report. This recommendation was adopted and the committee again reported in 1916. This report is very thorough and scholarly, dealing with the whole subject under the following heads: main evils of our present land title system; methods of remedy; suggestions as to common objections; and finally a recommendation that a "Torrens Constitutional Amendment" be adopted in the State of Iowa. This report was received and ordered printed and the committee continued. The committee in 1918 made no further report, but called attention of members to the fact that in 1916 the American Bar Association had adopted a Uniform Registration Act, which is the modified Torrens Land Title System, and also that several States had recently adopted Uniform Registration Acts.[162]

The Association indorsed a resolution recommending that the Iowa road laws be so amended as to permit the cost of building hard surfaced roads to be assessed equitably in accordance with the special benefits to be derived from the improvements made; that the special assessment road improvement district be adopted in Iowa; and that the creation of a State fund from present taxes with which to aid the

[161] *Proceedings of the Iowa State Bar Association*, Vol. XX (1914), pp. 149–152.

[162] *Proceedings of the Iowa State Bar Association*, Vol. XXI (1915), pp. 170–173, Vol. XXII (1916), pp. 170–184, Vol. XXIV (1918), p. 203.

counties in road construction would be a beneficial measure. In general, the objectives of these recommendations have been attained through subsequent enactments of the Iowa road laws.[163]

The Association has long been interested in the investigation of taxation and in the equitable adjustment of its burdens. The Special Judicial Committee in its report at the first meeting of the Association called attention to the whole subject of assessment and taxation as deserving of consideration. As early as 1900 the Association adopted a recommendation of the Committee on Law Reform as follows: "We recommend that this Association create a section, to be known as the 'Section on Taxation'; said section to be permanent, and to gather facts touching the method of levying and collecting taxes, and to report to this Association from time to time such changes, if any, as may be deemed necessary to secure a fair and equitable assessment of all property subject to taxation, to the end that the public burdens may be properly apportioned among the individuals, firms and corporations having property subject to taxation; and that a committee be appointed to formulate a plan of organization for such section." Such a committee was accordingly appointed, consisting of R. M. Haines of Grinnell, E. M. Carr of Manchester, and M. J. Wade of Iowa City.[164]

The "Committee on Organization of Section of Taxation" first reported in 1901 in a paper read before the Association by R. M. Haines of Grinnell. The report is a good summary of the problem of taxation in 1901 and is replete with statistics for Iowa. This report as adopted by the As-

[163] *Proceedings of the Iowa State Bar Association*, Vol. XXI (1915), pp. 221, 222; *Laws of Iowa*, 1919, Ch. 237, 1923, Ch. 85; *Code of 1924*, Chs. 241, 242, especially Secs. 4690, 4707.

[164] *Proceedings of the Iowa State Bar Association*, Vol I (1895), pp. 78, 79, Vol. VI (1900), pp. 56, 152–154, 164, Vol. VII (1901), p. 169.

sociation carried the following recommendations: (1) that the section consist of six members, each to serve for three years, with first appointments of two to serve for one year, two to serve for two years, and two to serve for three years; (2) that the section organize by the election of a president, vice president, and secretary; (3) that the section meet annually in connection with the Association; (4) that this section be authorized to expend funds as necessary for investigation, by the concurrent action of the president of the section and the president of the Association; (5) that there be at least one session of the proceedings of the Association at the annual meetings devoted to the work of this section. This report was referred to the Committee on Constitution and By-Laws which brought in a report creating the Section on Taxation, and this rule was adopted without debate into the By-Laws of the Iowa Bar Association.[165]

R. M. Haines of Grinnell addressed the Association in 1904, advocating the exemption of moneys and credits from taxation, and proposed that a committee of three be appointed with instructions to prepare and report to the Association at its next meeting a bill for the purpose of reforming the taxation system and embodying the general proposition which had been under consideration. This motion was adopted.[166]

At the 1905 meeting of the Association, a bill was submitted by the Section on Taxation providing for the exemption from taxation of moneys and credits. Judge C. C. Nourse moved that the Association do not recommend this bill, and after full discussion the Association adopted this motion, thus rejecting the proposed bill. By a law enacted by the

[165] *Proceedings of the Iowa State Bar Association*, Vol. VII (1901), pp. 135–141, 169, 170, 199, 200.

[166] *Proceedings of the Iowa State Bar Association*, Vol. X (1904), pp. 135-138.

Thirty-fourth General Assembly, moneys and credits are taxed upon uniform basis throughout the State of five mills on the dollar of actual valuation, to be assessed and collected where the owner resides.[167]

The service of the Section on Taxation has continued ever since its formation. A special feature of its work has been in securing the presentation before the Association of several valuable papers on subjects relating to taxation.[168] These papers were the product of considerable research and investigation on the part of the writers, and have proved interesting as well as valuable. R. M. Haines, of Grinnell, presented the subject, "The Tax Ferret and the Tax Ferret's Law" in 1901. He introduced the program of the Section on Taxation at the annual meeting in 1902, at which several interesting papers were presented. H. S. Richards, of Iowa City, treated the subject, "Ought Our Laws Be so Amended as to Exempt from Taxation, Moneys and Credits and Other Forms of Property Easily Concealed?" This paper was followed by a discussion led by James O. Davis, of Keokuk. A. E. Swisher, of Iowa City, presented the subject, "Should the Law Providing for the Collection of Taxes be Changed so as to Enforce by Additional Penalty, or Partial Confiscation, the Assessment of Moneys and Credits Which Now Escape Taxation?" This paper gave consideration to the tax ferret law; it made several recommendations for solution of taxation problems, and was followed by an interesting discussion led by Judge M. J. Wade. E. E. McElroy, of Ottumwa, presented a paper entitled, "Would the Adoption of a Law for the Taxation of Mortgages and Relieving the Real Estate Covered by Mortgages from so much of the Burden of Taxation Be Desirable?"

[167] *Proceedings of the Iowa State Bar Association*, Vol. XI (1905), pp. 147–191; *Laws of Iowa*, 1911, Ch. 63.

[168] *Proceedings of the Iowa State Bar Association*, Vol. VII (1901), pp. 152–157, Vol. VIII (1902), pp. 89, 90–119, 181–188, 211, 218.

In 1905 Mr. Haines presented a paper entitled, "Statistical Data from Official Reports", dealing largely with the question of the taxation of moneys and credits. Mr. McElroy read a paper entitled, "Double Taxation—Some Remedies Attempted". This paper was followed by one on the subject, "Are Moneys and Credits Appropriate Objects of Taxation?" by F. I. Herriott, Professor of Economics and Political Science, of Drake University, Des Moines. At the conclusion of this paper there was a discussion of the issues involved, after which the Association rejected the bill for the exemption from taxation of moneys and credits.[169]

At the 1913 meeting of the Association, J. H. McConlogue reported briefly for the Section on Taxation showing that the legislature had appointed a commission to study taxation. This commission had investigated the tax laws of the several States and had submitted to the legislature a plan of levying and collecting taxes. In 1915, Mr. McConlogue reported that a bill on taxation had been introduced in the legislature, but was defeated in the Senate. In 1916 the Section on Taxation submitted a formal report going to the heart of the matter of taxation reform in Iowa. It recommended "that all of the present laws on the statute books governing the whole plan of taxation together with all officers doing the work of listing, assessing, and valuing of property for taxation be abolished, that a new and independent system of taxation, whereby property may be listed, assessed, valued, and equalized with all other property, be established and that new and complete administrative machinery be installed in our law to carry out fully the suggestions herein made". The Section submitted six paragraphs of concrete suggestions outlining the pro-

[169] *Proceedings of the Iowa State Bar Association*, Vol. XI (1905), pp. 148–191.

posal for a modern system of taxation for Iowa, and suggested the appointment of a special committee to draft and present appropriate bills to the next legislature. This report was accepted and filed, and a special committee was created to consider the matter.[170]

In its report in 1920, the Section on Taxation recommended that a committee be appointed by the president of the Association to present the matter and endeavor to have the next General Assembly of Iowa provide for the appointment of a commission to investigate the subject and prepare and present to the General Assembly in 1923 a bill embodying a modern, adequate, and equitable system of general taxation for the State and its taxing districts. This revised system of taxation should, in the judgment of such commission, be fair, just, and equitable to all persons and concerns affected. The proposed revision was to deal with: (a) the method or basis of levying and collecting all general and special taxes and assessments; and (b) the procedure relative to objections, hearings, equalizations, appeals, and reviews, on the part of the taxpayers in such matters. This report was adopted by the Association.[171]

The report of the Special Legislative Committee on Taxation to the Association in 1921 showed that the Thirty-ninth General Assembly had substantially enacted into law the recommendations contained in the report of the Section on Taxation in 1920. This new law provided for the appointment of a special joint committee of eight members, four from each house. This committee was to investigate and report upon the revision of the taxation laws of the State, to examine and consider such bills for general re-

[170] *Proceedings of the Iowa State Bar Association*, Vol. XIX (1913), pp. 56, 57, Vol. XXI (1915), p. 227, Vol. XXII (1916), pp. 87–93.

[171] *Proceedings of the Iowa State Bar Association*, Vol. XXVI (1920), pp. 173, 174.

vision of the tax laws as had been prepared by the Code Commission or introduced into the Thirty-ninth General Assembly, and to prepare such bills for acts to amend and revise the assessment and taxation laws as should provide adequate and fair means and methods of assessment and equalization and distribute the burdens of taxation fairly and equitably, and to submit bills and report to the next legislature.[172]

Thus the matter of investigation and reform of taxation laws so long presented, studied, and advocated in the Iowa State Bar Association, culminated in the creation of a legislative tax commission to carry on this work. It is a long process and an arduous undertaking, but the difficulties themselves will serve to contribute to the popular understanding of the necessity of such reform. And in measure as the people understand and approve revision of the law, the legislature will respond toward the eventual enactment of reform upon the statute books. Perhaps the most advanced step that can be taken in the progress of any law reform project is the creation of an efficient commission to make a systematic and comprehensive investigation and study of the entire subject, to the end that proposed progress may be broadly based upon sound and scientific premises.

In this review a survey has been afforded of the history of the Iowa State Bar Association and its law reform proceedings during the entire half century from the time of its first establishment as the Early Iowa State Bar Association in 1874 down to the present time. From this survey there is revealed on the part of the Bar Association of Iowa

[172] *Proceedings of the Iowa State Bar Association*, Vol. XXVII (1921), pp. 157, 158; *Laws of Iowa*, 1921 Ch. 411.

an open minded policy toward matters of proposed reform in the law. Numerous propositions have been considered. The Association has gone on record in its proceedings in its indorsements and rejections. It has preserved in this record the discussions and debates, affording opportunity of an impartial consideration of the merits of proposals and the reasons for the attitude of the Bar toward them. Perhaps the greatest value of such meetings, however, is found in the opportunity given for the free discussion of various problems. Whether the reforms proposed at the Bar Association meetings are adopted or rejected by the Association, they are at least given a hearing and publicity and that is of itself a valuable service.

The Association, however, has not hesitated to assume responsibility for its action. It has upheld to the profession and to the public the high ideals of a clean, well qualified bar, ethical standards, and honorable public service. In the matter of law reform it has taken the most advanced step yet taken within the State of Iowa. The Iowa State Bar Association at its 1924 session indorsed a proposal to the Iowa legislature for the creation of a commission from the bench, active practitioners, and faculties of the law schools of the State, to investigate and study the advanced systems of judicature of the nations of the world with a view to scientific law reform in Iowa.[173]

The Iowa Bar is abreast of the times in the matter of interest in professional movement looking toward the ultimate reform of legal institutions and law. This was instanced in 1925 in the appearance before the Association of Henry M. Bates, Dean of the Law Department of the University of Michigan. The subject of his address was "The American Law Institute and Its Probable Influence Upon

[173] *Proceedings of the Iowa State Bar Association*, Vol. XXX (1924), pp. 132–145.

the Administration of Justice''. In concluding his address Dean Bates said:

> We have no imperial authority back of us; there is no emperor to back this as a code; we don't want it, for very obvious reasons, to take on the form of an edict or a statute. The thing must win its way by its own superiority, its own scholarship, its own sound reasoning and wisdom . . . . Now the American Bar, at least the Association, has formally adopted this scheme. The Institute is its creation. It is its creation for the purpose of carrying on the work which the American Bar, or at least the American Bar Association, has demanded and defined, and it is up to you men and all other American lawyers, if you believe in this thing, and I believe you do, to use every ounce of your strength if necessary to support what is certainly the greatest juristic movement of all times.[174]

The American Law Institute proposes to make a complete, clear, and simple restatement of all the law from the standpoint of principles of justice as opposed to precedent. It is a colossal undertaking requiring many years and the coöperation of many minds to complete it.

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[174] *Proceedings of the Iowa State Bar Association*, Vol. XXXI (1925), pp. 180–192.