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# BAR BULLETIN

*Editor* .....KENNETH C. SEARS

*Associate Editor for Bar Association* .....W. O. THOMAS

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OFFICIAL PUBLICATION OF THE MISSOURI BAR  
ASSOCIATION

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Trial by jury is becoming an increasingly expensive luxury.—AUSTIN W. SCOTT, Harvard Law School, 33 H. L. R. 245.

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We have no degrees of negligence in Missouri, so far as the right to recover for negligence is concerned. We are confining our remarks to the case in hand, and to the statute under which it is brought.—GRAVES, J., in *State ex rel v. Ellison*, 213 S. W. 1. c. 461.

But why so cautious?

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## DILEMMA OF TRIAL COURTS.

An inspection of the reports of the appellate courts of Missouri shows that about fifty-five per cent of the cases are affirmed and about forty-five per cent reversed or reversed and remanded.

A brilliant journalist, in speaking of the members of his profession, said that the editor sat at his window, watched passing events and made

his comments on the spur of the moment, but that his readers had ample time to criticise them at their leisure—"the editor had to shoot on the wing but was shot at 'settin'". This is very much the predicament of the trial courts. They and trial lawyers know from experience how little opportunity the judge has during the hearing to consider the law of the cases he passes upon. Rarely, even in intricate cases, is he presented with a trial brief and few, very few, lawyers on motions for new trial prepare such a brief as they would be willing to present to the appellate court. Nevertheless, after an appeal is taken, with microscopic eye, they leisurely search the hurriedly made record for errors and bombard the appellate court with their heavy legal artillery and succeed in reversing cases on points never presented to the trial court and of which he never heard.

Would not the interest of litigants be better subserved and the whole system of jurisprudence much improved if lawyers and trial judges, after careful preparation, would enter upon hearings with determination to end the controversy? Instead of this some lawyers seek to make the trial court a whistling station on the road to the appellate court. It would at least tend to make better trial judges, help the overworked appellate courts and bring speedier returns to the lawyer, to say nothing of the litigant.—W. O. T.

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#### ERROR IN INSTRUCTIONS.

A very large percentage of cases are reversed and remanded on account of faulty instructions. Some wag very aptly said that a certain divine "offered the most eloquent prayer ever addressed to a Boston audience." It would be an interesting survey to ascertain the actual influence many declarations of law have on the minds of the jury. Is it not possible that many instructions, while read to the jury, are really addressed to the appellate court? Of course instructions to juries are invaluable and a necessary guide to a correct finding of facts and by all means should state the law with accuracy. Yet some appellate courts assume that "all error is prejudicial" and lawyers with a desperate case against them on the merits will insist on a reversal because of minute aberrations in instructions that the most astute jury would never discover in a generation—and sometimes succeed.—W. O. T.

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That a father is liable for necessaries for the support of a son until he is 21, but of a daughter only until she is 18, when the latter is more helpless and weaker of the two, presents a curious situation and we are fully aware of its apparent absurdity in most instances. But such is the statute, and we are controlled by it.—TRIMBLE, J., in *Winner v. Schucart*, 215 S. W. 905, 1. c. 908.

## MOTIONS FOR NEW TRIAL.

It will be interesting in many ways to anticipate the probable ruling of the Supreme Court *en banc* on the necessary contents of a motion for a new trial. The changed personnel in each of the two divisions will almost certainly again bring the consideration of this hotly contested question to the court's attention. Should Judge Williamson follow Judge Farris in Division 2 it will be up to Judge Goode to make the compelling majority. Doubtless much can be said on each side of the controversy. One thing in favor of the majority opinion, as at present expressed, is that of convenience. A young lawyer, with perfect propriety, may extract from the files a motion for a new trial filed and used by his grandfather in 1865 in *Smith v. Jones* and refile it today in *Green v. Brown* with the assurance that it in every respect calls to the trial court's attention the errors committed by him. In addition to its convenience, no doubt its antiquity is another strong point in its favor.—W. O. T.

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Now, we would like suggestions as to how to raise the standard. We feel that the public is not fully aware of the needs of high preliminary education. There is too much latitude given; there is too much of the idea that a young man should have a chance to make good. If any of you gentlemen have had any experience on a grievance committee, you will know that in practically every case that comes before you it is the man who has never had a good, broad, general education in the first instance before he studied law, and who looks upon the profession of the law merely as a means for getting money, that comes before you.—J. C. COLLINS, member of Bar Examining Board of Rhode Island, at American Bar Association, Sept., 3, 1919.

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## SECRETARY OF AMERICAN BAR ASSOCIATION.

George Whitelock, of Baltimore, the efficient Secretary of the American Bar Association, is dead. For more than twenty years he had been secretary. After according all the credit due the great lawyers whose devotion has made that Association one of marked influence and efficiency, it was thru its Secretary that its complex parts articulated and its energies were directed and applied. He was a man of rare executive ability, of most pleasing personality. His long connection with the organization made him familiar with all its details and he was a great treasure of information. Perhaps no lawyer in the United States was better known or more beloved than he. To the American Bar Association his loss will be almost irreparable.

## NEED OF PERMANENT SECRETARY.

The death of Mr. Whitelock brings to mind the provisions of the constitution of the Missouri Bar Association which provides that its Secretary shall be appointed by the President of the Association. As a result we have a new Secretary with each new President. This is unfortunate. The Secretary should not be changed unless he is incompetent. Upon him rests the responsibility of keeping the various activities alive. He should have energy, executive ability and devotion for his work. If our present secretary proves efficient we should keep him. We need a secretary who will continually prod the committees to activity, who will remind them of their legislative and other duties, who will keep in touch with every department of the Association work and, with the aid of the President and Executive Committee, arrange for meetings, etc. In short, the secretary is the one to see that everybody charged with a duty does it. He is essentially the dynamo of any organization. We trust our new secretary will prove such a jewel.

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COMMITTEE REPORTS.

There will be neither time nor opportunity to propose any legislation for the annual meeting this fall. Hence, it devolves on the present committees to submit all reports which can be considered and which will be passed on to new committees to be put up to the Legislature. The last Legislature, for some unaccountable reason, killed the code bills which were the result of so much intelligent work on the part of former committees and which had the unanimous approval of the Association. This, of course, was very unfortunate, but we must try again. Let's not be weary in well doing for in due season we shall reap if we faint not. We trust the various committees will hold meetings at an early date so that they can complete their reports in time for publication before the annual meeting.

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Legislative regulations of the details of legal procedure is bald usurpation of the function of the courts. The courts originally framed the rules of procedure, and this was logical because the courts are held responsible for the results; but it is absolutely illogical and absurd to hold them responsible when the legislature excludes the courts from the regulation of procedure. The legislature may well lay down the framework, but should stop there and commit to the courts the working out of the details of procedure by rules. Elasticity and adaptability may thus be obtained in place of rigidity. To restore the rule-making power to the courts, where it logically belongs, is to strike the fetters from the hands

of the courts. When that is done we shall have made a long step towards the goal of uniform and simplified procedure.—JOHN B. WINSLOW, Chief Justice of Wisconsin, at American Bar Association, Sept. 3, 1919.

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### CODE OF ETHICS.

Several years ago, I forget how many, I presented to a meeting of the State Bar Association at St. Joseph, a Code of Legal Ethics. It was practically identical with the code adopted by the American Bar Association. It was carefully considered, section by section, and was unanimously adopted.

Accompanying the adoption of this code was a resolution requesting the Supreme Court of Missouri to have this code of ethics printed in the volumes of the official reports. This resolution I presented at Jefferson City, and Judge Gantt, I believe it was, said he would present the matter to the Court. But the code was never published. This should be done.

A young man who has graduated from a college or law school and has gone with a firm as a clerk, usually has professional ideals of the highest type. Suppose while interviewing some witnesses he is asked by the head of the firm to do something which he thinks to be in conflict with his professional ideals. If he could take a volume of the official reports and call attention to a section of the code and ask his employer if his request did not conflict with the code would it not be helpful to both?

Should we not have an officially recognized standard to go by? Are not all morals, especially professional ethics, largely a matter of education? If our State Bar Association has set a standard, should it not be officially printed as a *vade mecum* to the young lawyer struggling with poverty and its resulting temptations to sharp practice?

I respectfully urge this matter as worthy the attention of the State Bar Association in these days of dangerous commercializing tendencies in our profession.

HENRY D. ASHLEY.

Kansas City, Mo.

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### THE AMERICAN LEGION.

At 11:45, the night of September 11, 1918, a few minutes before the American artillery began the barrage which opened the St. Mihiel drive, a German shell struck one of our radio stations killing two men and wounding four others. As one of the wounded men was being put into an ambulance, he said to his unwounded comrades: "If I don't get back with you fellows, we'll meet in the states and talk things over."

In different ways and under different circumstances, this thought was expressed every day by thousands of the soldiers along the battle fronts. Immediately after the armistice men began to organize. Regimental, brigade and divisional associations were started. Organizations by arms of the service were attempted, and headway was made in several instances. One large society was formed to include all men who had seen overseas' service. The main thought back of nearly all of these organizations was to keep alive the memories, incidents and history of the service.

But, in the minds of many in France and in America, there was the thot and hope that one great organization, embracing every man and every woman who honorably served in the military or naval forces of the United States during the war, should be formed. They had a vision of a strong and powerful organization which not only should preserve the memories of the war, but should also carry into civil life the same high, unselfish, patriotic spirit which dominated the men and women of the service during the war.

The first meeting to discuss the formation of an after-the-war association of the men and women of the service was held in Paris February 15, 1919. At this meeting it was decided to invite to a convention to be held in Paris March 15, 1919, representatives from all of the units in France and with the army of occupation. These delegates were selected in equal numbers from the officers and men of the divisions. On March 15 the delegates assembled and held what has been known as the "Paris Caucus." This caucus formed a temporary organization, adopted the name "The American Legion" and outlined its purposes in a preamble. An executive committee was selected to push organization. A committee was sent from Paris to carry on the work here in America. A ready response was found everywhere.

On May 8, a great national caucus was held in St. Louis and every state and territory was represented. During the caucus the greatest enthusiasm and the highest spirit of real, loyal Americanism prevailed. They saw in the American Legion an opportunity to render efficient, practical, organized service to the country during the trying, uncertain, and disturbing days of reconstruction. In that caucus all ranks and grades of military service were blended into real comradeship. The general and the private soldier worked together and it was by accident that either knew the previous military rank of the other. They were equals.

The preamble of our constitution shows the high objects to which the American Legion has consecrated itself.

"For God and Country, we associate ourselves together for the following purposes: To uphold and defend the Constitution of the United States of America; to maintain law and order; to foster and perpetuate a one hundred per cent

Americanism; to preserve the memories and incidents of our association in the great war; to inculcate a sense of individual obligation to the community, state and nation; to combat the autocracy of both the classes and the masses; to make right the master of might; to promote peace and good will on earth; to safeguard and transmit to posterity the principles of justice, freedom, and democracy; to consecrate and sanctify our comradeship by our devotion to mutual helpfulness."

At the first opportunity the American Legion showed its sincerity and the power of its determined patriotism by specific performance. In the St. Louis caucus, in less than two months after its birth in Paris, the American Legion adopted resolutions demanding an investigation of the action of the War Department in giving honorable discharges to convicted conscientious objectors; vigorously denounced the I. W. W.'s, Anarchists and International Socialists; demanded that Congress deport those aliens who refused to join the colors during the war and pleaded their citizenship in other countries to escape the draft; demanded that "naturalized citizens convicted under the espionage act shall have their citizenship cancelled and shall be deported." It did not stop with the passage of resolutions. It provided a legislative committee to see that the recommendations of the caucus were acted upon. For months that committee has been in Washington making the United States less popular as a health and pleasure resort for the Reds, Anarchists and Bolsheviks of the world.

On the 16th day of September 1919, the American Legion was incorporated under an act of Congress.

In Minneapolis, on the 11th day of November, 1919, the American Legion held its first annual convention. In that convention it continued, enlarged and added to the work outlined and started in May at St. Louis. What had been merely a tentative organization was made permanent. Tho less than eight months had elapsed since the idea of the American Legion was first formally discussed by a few men, more than a million members belonged to the Legion before its first annual convention. It was nearly a year after Lee surrendered at Appomatox before the Grand Army formed its first post. One year from the signing of the armistice the American Legion had established more than five thousand local posts, had perfected departments in every state and territory in the United States, and was doing excellent work in Cuba, Mexico, Panama and Hawaii.

Some have contended that the American Legion was formed in order to keep soldiers together in some form of military organization. Section 1, Article II of our constitution, in part, is as follows: "The American Legion is a civilian organization; membership therein does not affect or increase liability for military or police service." To wipe from the Legion

every semblance of the military, the above section further provides that: "Rank does not exist in the American Legion; no member shall be addressed by his military or naval title in any convention or meeting of the Legion." In a meeting of the American Legion, General Pershing, Admiral Sims, Sergeant Michael McGrath and First Class Private Tony Tontino all stand on equal footing and in the true spirit of the word call each other "Comrade," and by no other title are they addressed while in an American Legion meeting.

Others have expressed the fear that the American Legion has been founded for political purposes. The constitution of the American Legion provides: "The American Legion shall be absolutely non-political and shall not be used for the dissemination of partisan principles nor for the promotion of the candidacy of any person seeking public office or preferment. No candidate for or incumbent of a salaried elective public office shall hold any office in the American Legion or in any department or post thereof." Our motto is "Policies not Politics."

This, however, does not mean that the members of the American Legion will not be active in public affairs. Already it has produced splendid results at Washington. The War Risk Insurance Act has been modified and the handling of policies of insurance simplified so that it is of far greater benefit to the men carrying government insurance. It was largely responsible for the passage of the Sweet Bill which greatly increases the allowance to disabled soldiers. It is encouraging the passage of a bill providing for adequate national defense. It is handling all manner of claims coming from ex-service men. Thousands of them have not obtained their allowances from the government, their back pay, liberty bonds for which they subscribed and paid, and pensions and deposits to which they are entitled. In almost every town there is an American Legion employment bureau for the purpose of securing employment for ex-service men. The American Legion is also cooperating with the War Department in vocational training for wounded men and is assisting the Public Health Service in keeping in touch with those who have not regained their health.

While the American Legion cannot discharge a debt which the public owes to the men who risked so much and gave so much for America, it is doing all it can to put every man into the place for which he is now best fitted, to help the wounded get the proper medical care, and to drive the "unrest of the times" from the hearts of the discouraged, unfortunate and unhappy ex-service men. It is trying to show these men that the heart of America is not cold and that its appreciation is not dead. Public sentiment must sustain us in this work.

In the United States there are four million eight hundred thousand men and women eligible for membership in the American Legion. Nearly

half have joined already. We are not yet a year old. We want to increase our membership as rapidly as possible. If you believe in our purpose, please help us. In Missouri there are thirty thousand members, and two hundred and forty local posts. Missouri furnished over one hundred and fifty thousand soldiers, sailors and marines during this war. They should all be in the Legion. I will especially prize the sympathetic support of our profession in this noble work.

RUBY D. GARRETT.

Kansas City, Mo.

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### THE MAD STONE CASE.

I first hung out my shingle in the old Underwriters' Exchange Annex and slept in a folding bed in my private consultation room. One day while I was pondering the books and listening for the footsteps of a prospective client, a little bear-eyed Irishman opened the door, looked me over, and with a rather disappointed expression in his face critically remarked: "Is this Lawyer Ashley?"

His prefix revived me, and I replied: "It certainly is."

"Well, Mr. Frank Sellers of Benjamin McLean & Co. has sent me to you and will pay any bill I have from you for my law suit."

"All right," said I, electrified into animation. "What is your trouble?"

"Well, two weeks ago last Tuesday, I was bit by a large black Newfoundland dog, and the mad stone adhered to my leg two hours. I then writ the owner of this dog a letter and, Heaven be praised, I have a copy."

He thereupon drew from his pocket a crumpled dirty bit of paper and proceeded to read in a delicious Irish brogue and *cum expressione*:

"Dear Sir: Having been bit by your large black Newfoundland dog, and the Mad Stone adhered to my leg two hours, I write to inform you that upon the first germs of hydrophobia appearing in my system, I will kill you and the dog; if, however, the dog is kilt by you, we will be friends as before."

"Now, lawyer, after he got this letter, he took agin me a writ, habbus corpeous or keep the peace or some damn thing or other, claiming the letter contained a threat agin him. Now I can't see how the letter contained any threat, for I told him if the dog was kilt by him we would be friends as before. Now, lawyer, I want to have the law on him. But wait a minute, lawyer, I'll show the bite."

"Oh, never mind," said I.

He fixed his bleared eyes on me, put his foot on a chair beside me and, as he rolled up his trousers and unrolled a red flannel rag around the

injured leg, said in a determined manner: "I *will* show you the bite." The leg was indeed a terrible sight, swollen and blue as indigo.

Thereupon I examined the city ordinances about harboring a vicious dog and advised him that it was the alphabet of dog law that every dog was entitled to his first bite.

"What do you mean by that, lawyer?"

"I mean that you must show the previous vicious disposition of this large black Newfoundland dog before we can convict the owner under the ordinance against harboring a vicious dog—show that the dog had attacked or bitten some one before he bit you."

"All right, lawyer," said he, and departed.

The next day he returned and said, "Lawyer, I think I have the evidence."

"All right," said I, "What is it?"

"Well I have the name of a reputable citizen of the West Bottoms who will go upon the stand and swear in the book that not longer than one week before this terrible dog bit my leg, he completely tore from the person of my friend of the West Bottoms a fine pair of brain-new seven-dollar pants."

Thus armed, we filed our complaint in the police court and convicted the owner of harboring a vicious dog. He was fined \$5.00, and an order was made that the dog be officially executed.

I got the clerk, who was a wag, to put the death warrant in a large envelope with skull and crossbones for embellishment. Accompanied by a big Irish policeman, in full regalia, my client proceeded in triumph to the offending neighbor's yard, and there, before his eyes, the offending dog was officially executed.

Returning to my office, after liberal libations, he said: "And now Lawyer Ashley, what is your bill?"

Being ingenuous and new in the art of estimating from the client's point of view, I modestly stated my fee to be ten dollars.

Pulling out two five-dollar bills from a well lined wallet, he leaned over my chair, and remarked with alcoholic breath: "Lawyer, it was damn cheap for the money."

HENRY D. ASHLEY.

Kansas City, Mo.

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#### ST. LOUIS NOTES

Recently the activities of the membership committee of the Bar Association of St. Louis have resulted in bringing into the membership of the Association the large majority of the members of the St. Louis Bar. This membership now approximates 850.

Beginning last fall the Bar Association of St. Louis, at its monthly

meetings, has had as its guests members of the local, State and Federal Bench. Through these meetings the lawyers of St. Louis have had an opportunity to meet and to become better acquainted with the judiciary. It is needless to say that this better acquaintance has been mutually delightful and helpful.

At the December meeting, Judges Hook, Munger and Stone were guests of the Association. Messrs. Barclay and Krum were the speakers of the evening.

At the previous meeting, the association gave to Hon. Chas. B. Faris, the in-coming, and to Hon. David P. Dyer, the senior judge of the U. S. District Court, a reception which was largely attended. Judge Geo. W. English, the recently appointed Judge of the U. S. District Court of Illinois, Southern Division, was present and delivered an address. Both of the foregoing meetings will be long remembered as among the most delightful occasions in the history of the Association.

#### *American Bar Association Meeting.*

Most important and of especial interest to the lawyers of Missouri and indeed of all of our neighboring states is the fact that the American Bar Association will hold its annual meeting in St. Louis August 25th, 26th, and 27th, 1920. There will probably be an attendance of between two and three thousand lawyers, since the membership is 10,000. This will be the second time that the American Bar Association has met in St. Louis, the first meeting occurring during the World's Fair. The Secretary and the Treasurer of the Association will be in St. Louis February 21st to select headquarters and begin the arrangements for the annual meeting. All Missouri lawyers, especially should keep this in mind and make the necessary plans to attend the sessions of the Association.

W. SCOTT HANCOCK.

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#### KANSAS CITY NOTES

The Kansas City Bar Association held its first meeting of the year on January 17th. President German announced his committees for the year and laid special stress on the Legislative Committee, urging its members to begin their work at once, so as to permit the Association to pass on any proposed bills which they may recommend before the opening of the Legislature.

The Association authorized the creation of a memorial tablet and drinking fountain containing the names of the members of the Jackson County Bar who gave their lives in the great war. In addition to the names, the tablet will bear a suitable inscription and will be placed in

the County Court House in Kansas City. This tablet is entirely separate and distinct from the great two million dollar memorial for which the money has been raised by Kansas City.

The speaker of the evening at the Bar Association meeting was Governor Charles B. Brough of Arkansas. He delivered a most scholarly and eloquent address.

It is anticipated that the census will put Kansas City in the three hundred thousand population class, in which event sundry statutes heretofore applying only to St. Louis will automatically become operative in Kansas City. Mr. German called attention to this fact and named a committee to make compilation of such statutes.

The last Legislature created a Board of Paroles, composed of the ten circuit judges and the judge of the Criminal Court, which passes upon the granting and revoking of all paroles, the work formerly done by the judge of the criminal court who heard the case. In addition to these duties the Board has complete control of the McCune Home for Boys, the Parental Home for Girls and the Detention Home, comprising all the juvenile institutions of the county.

Mr. W. H. H. Piatt, of Kansas City, has been selected by the Executive Committee of the American Bar Association as a member of a special committee to consider a change in the policy, plan and scope of the American Bar Association Journal and to report to the spring meeting of the Executive Committee to be held in Chicago, April 8th, 1920.

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## COMMITTEES

**EXECUTIVE COMMITTEE:** James C. Jones, St. Louis; W. O. Thomas, Kansas City; O'Neill Ryan, St. Louis.

**COMMITTEE ON AMENDMENTS, JUDICIARY AND PROCEDURE:** Chairman, Robert F. Walker, Jefferson City; Virgil Huff, Marshall; M. E. Morrow, West Plains; J. D. Hotstetter, Bowling Green; James W. Suddath, Warrensburg.

**SPECIAL COMMITTEE TO COOPERATE WITH THE NEW CONSTITUTION ASSOCIATION OF MISSOURI:** Chairman, John M. Atkinson, St. Louis; Henry Lamm, Sedalia; Roy Williams, Boonville.

**COMMITTEE ON ILLEGAL PRACTICE OF LAW BY LAYMEN:** Chairman, Boyle Gordon Clark, Columbia; W. H. H. Piatt, Kansas City; James C. Jones, St. Louis; W. C. Irwin, Jefferson City; J. M. McPherson, Aurora.

**COMMITTEE ON BAR ASSOCIATIONS:** Chairman, Lawrence T. McGee, Salem; Roy Rucker, Keytesville; Ben Marbury, Farmington; Sam O. Hargus, Kansas City; Charles M. Hay, St. Louis.

**COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR:** Chairman, E. L. Alford, Perry; John T. Sturgis, Springfield; James Park, Clinton; O. M. Barnett, Columbia; Eugene McQuillin, St. Louis.

**COMMITTEE ON UNIFORM STATE LAWS:** Chairman, Frank W. McAllister, Jefferson City; James T. Blair, Jefferson City; Vinton Pike, St. Joseph; A. H. Robbins, St. Louis; R. M. Sheppard, Joplin.

**COMMITTEE ON LEGAL BIOGRAPHY:** Chairman, Shepard Barclay, St.

Louis; W. N. Evans, West Plains; O. H. Dean, Kansas City; J. W. Halliburton, Carthage; George Mahan, Hannibal.

COMMITTEE ON GRIEVANCES AND LEGAL ETHICS: Chairman, F. M. McDavid, Springfield; Oak Hunter, Moberly; Ed J. White, St. Louis; Frank P. Sebree, Kansas City; Ralph Wammack, Bloomfield.

COMMITTEE ON LEGAL PUBLICATIONS: Chairman, W. O. Thomas, Kansas City; J. P. McBaine, Columbia; R. A. Brown, St. Joseph; C. B. Faris, St. Louis; A. D. Burnes, Platte City.