[University of Missouri Bulletin Law Series](http://scholarship.law.missouri.edu/ls)

Volume 28 *November 1923* Article 6

1923

Bar Bulletin

Follow this and additional works at: http://scholarship.law.missouri.edu/ls

Part of the Law Commons

Recommended Citation
Bar Bulletin, 28 Bulletin Law Series. (1923)
Available at: http://scholarship.law.missouri.edu/ls/vol28/iss1/6

This Bar Bulletin is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in University of Missouri Bulletin Law Series by an authorized administrator of University of Missouri School of Law Scholarship Repository.

BAR BULLETIN

Editor .... KENNETH C. SEARS
Associate Editor for Bar Association .... C. W. GERMAN

OFFICIAL PUBLICATION OF MISSOURI BAR ASSOCIATION

Officers of Association

President .... A. T. DUMM, Jefferson City
First Vice-President .... FORREST C. DONNELL, St. Louis
Second Vice-President .... MURAT BOYLE, Kansas City
Third Vice-President .... ROY D. WILLIAMS, Boonville
Treasurer .... DELL D. DUTTON, Kansas City
Secretary .... KENNETH C. SEARS, Columbia

JUDICIAL COUNCIL

Probably the greatest need of Missouri government today is a more flexible and unified court system. Our courts are now independent of one another; there is no administrative head to the system; the rules of procedure are frequently inadequate and being statutory cannot be changed by the courts themselves; the growth of cities and shift in population has caused some courts to be over-worked and their docket congested while others have little to do. Much delay, unnecessary expense and consequent failure of justice has resulted from these conditions. No individual, official or party is to blame for this situation. The fault is in lack of co-ordination in the various parts of our court system. The revised article on judiciary provides for a flexible court system and vests administrative powers and the power to make rules of procedure in a judicial council in which the circuit courts, courts of appeal and the Supreme Court are all represented. This council can assign judges, temporarily, to the courts which are behind in their work and thus relieve congested dockets. This new court system will operate to prevent delay in court proceedings and save the people much expenditure of time and money in securing their rights in the courts.

C. H. McCLURE in *The School and Community,*

Volume 9, page 412.

AMERICAN LAW INSTITUTE

"We need the improvement," he said, "which is contemplated by the institute. We need even greater improvement in the law of procedure, and need even more improvement in the administration of the criminal law. I am especially interested in the matter of procedure, because procedure stands between the abuse of the principles of law and their use for the benefit of mankind. You can have as high and as sound principles of law as possible, but if you have not the procedure by which you can apply them to the ordinary affairs of men, then it does not make any difference what the principles are or how erroneous they may be.

"There are great defects in our present system of administering law, and the truth is that the public needs education as to whose fault it is that the law is not as effectively administered as it ought to be so far as procedure is concerned. It is natural for the public to say that the courts are not doing their duty. You know and I know that the reason why the courts are not as effective as they might be—that the reason why procedure halts, and that justice is not promptly and effectively administered—is because the legislatures do not do their duty with reference to the interest they take and the skill they manifest and the time they give to the improvement of practice and procedure. I know it, because I have seen it work in too many states and in respect of Congress itself. I had the opportunity last year to see the workings of the English system, and when you observe their methods of disposition and the dispatch with which everything is carried on, you begin to appreciate how far we are lacking in these respects.

"The great progress made in England during the past 50 years was made through great legal measures devised by a great lord chancellor and the law officers of the crown. And the only way in which we can bring about a real change in our procedure for good is to attempt to secure leading members of the bar, willing to sacrifice themselves and willing to go in and take charge of the formulation of the laws. I do not think the legislatures are opposed to reform of our legal procedure, but there are few people who take the necessary interest and have the knowledge and power of leadership either in Congress or in the legislatures. We are where we need legislation in Congress, and already we have made some progress by securing the passage of one law that creates a judicial council of the senior circuit judges and the chief justice to sit each year to devise economical ways of using the judicial force of the United States to meet the arrears of business in the United States courts.

"Now, it seems to me, there ought to be a council composed of judges and of members of the bar, men of experience and standing, to adopt rules of practice for the *federal* courts and have the power of recommending them to Congress, with the provisions that, pending their con-

sideration by Congress, they should have the force of law. The system of procedure is a professional question. This is in the public interest—it is not for the personal advantage of the members of the bench or of the members of the bar. In our own court we have appealed to Congress to put there a law drawn carefully by the members of the court, for we are anxious to bring our dockets up so that a case can be heard within two or three weeks after it is filed.

"We ought to have a single statute which shall cover appellate jurisdiction, jurisdiction of courts of appeal of the district courts, and of the superior court, and that law has been prepared. It is the business of the bar to know what these difficulties are, and to bring them to the attention of the people, the legislatures and congressmen, so that the people will realize that they have within their control a very great part of the machinery for progress in the administration of the law. The impression that if you know a member of the supreme court you stand a better chance does us a great injustice."

The above remarks were made by Mr. Chief Justice Taft before the Bar Association of the City of Boston on June 16, 1923. (Reprinted from volume VIII of the Massachusetts Law Quarterly, page 3.)

DISBARMENT

In the 1923 yearbook of the Bar Association of St. Louis, at page 80, there appears a report of the committee on grievances. In the report is this statement, concerning two attorneys guilty of embezzlement:

> "No disbarment proceedings have been recommended in these two cases, for the reason that conviction on a criminal charge must first be had before a disbarment proceeding can be successfully maintained."

In the same book at page 115 in the report of the committee on ambulance chasing appears the following:

> "In addition, your committee drew and had introduced House Bill No. 311, the effect of which was to remove the requirement of conviction in a criminal court of a crime involving moral turpitude before an attorney can be disbarred for the commission of such an offense."

Like statements are made frequently at the meetings of the Missouri Bar Association. Are the assumptions correct? The writer ventures his belief that they overlook the fact that the law concerning disbarment was materially amended in 1919 and that, so far as the writer knows, no decision has yet construed the new provisions.

Until there has been a decision why do so many lawyers assume that the changes made in 1919 were futile? The bill which resulted in these changes was introduced by Frank Wilkinson of the Kansas City bar and

at that time a member of the lower house of the Missouri General Assembly. It was introduced at the request of the Kansas City Bar Association, of which Ellison Neal, Esq., was at that time president. The purpose of the bill was to remove the impediments established by the *Selleck* case.[1] It would be unfortunate if despite this effort we have gotten nowhere in attempting to get a rational law for disbarment.

Sections 951 to 963 R. S. Mo. 1909, inclusive, constituted the statutory law of disbarment until the amendment which became effective in 1919. Since that time the statutory law is contained in sections 681 to 689 R. S. Mo. 1919. A comparison of these provisions demonstrates that the General Assembly in 1919 made many changes in the law of disbarment.

The most important question is whether the changes have resulted in abrogating the rules in the *Selleck* and *Sanderson*[2] cases. These cases held that an attorney could not be tried in disbarment proceedings, if he was accused of conduct which amounted to an indictable offense, until he had been indicted and tried in a criminal court for that offense. He could not even be suspended for a definite term pending a trial in criminal court. It would also seem to have been the law that if an acquittal resulted in the trial in a criminal court nothing further could be done in disbarment proceedings for conduct that was an indictable offense.[3]

Now these results were the effect of sections 956 to 960, inclusive, R. S. Mo. 1909. The radical changes in the law passed in 1919 concerns these sections. Section 956 R. S. Mo. 1909 was largely retained in the law of 1919 with the exception that instead of the term "indictable offense" the phrase "any criminal offense involving moral turpitude" is used. Sections 957, 958, and 959, R. S. Mo. 1909 were eliminated from the law passed in 1919. Instead of these provisions there appears in section 686 R. S. Mo. 1919, the following provisions: (1) if the attorney be acquitted or discharged "upon his trial", or (2) if he be charged under the second or third[4] clauses of section 681 the "matter" shall be determined without delay. It would seem to be clear that the word "matter" means the disbarment proceedings. What is the meaning of the phrase "upon his trial"? The writer ventures the opinion that it means a trial in a criminal court. If this is so then it would seem to follow that an acquittal or discharge in a criminal court is no bar to a disbarment pro-

1. *State ex rel.* v. *Reynolds et al.* (1913) 252 Mo. 369, 158 S. W. 671.

2. *Jones* v. *Sanderson* (1921) 287 Mo. 176, 229 S. W. 1087.

3. R. S. Mo., 1909, section 959.

4. Section 686 also refers to a *fourth* clause. There is no fourth clause in section 681. There was a fourth clause in the bill as it was engrossed in The House of Representatives but it was eliminated in the Senate and did not become a part of the law. This fourth clause provided: "and fourth, for any unprofessional conduct, act or practice whatsoever tending to defeat or to bring the courts or the profession and practice of law into disrepute."

ceeding as it was under section 959, R. S. Mo. 1909. It might be held that section 686 R. S. Mo. 1919 means that an attorney accused of "any criminal offense involving moral turpitude" must be either convicted, acquitted, or discharged before proceedings in disbarment can be had. This, however, would seem to be a narrow construction for the reason that an acquittal or discharge is no bar. So, why require disbarment proceedings to be held in abatement pending a decision that will be of no effect? That would seem to be an idle and wholly undesirable ceremony. Furthermore, in case the lawyer could be convicted in a criminal court there would be no advantage to him to have the disbarment proceedings wait for that development.

It must be admitted that unfortunately courts have often dealt with disbarment statutes in a very strict manner.[5] That is one reason why American lawyers lack the repute possessed by English lawyers. The attitude of judges with reference to disbarment has called forth the following protest:

> "Equally striking is the attitude of many judges in disbarment cases. A lawyer commits deliberate perjury in the court in which he practices. It is proved beyond doubt. A layman, for the same offense, would receive a penitentiary sentence; the lawyer is merely suspended from practice for two or three years.[6] Another lawyer hires two adventurers to falsely impersonate his clients in effecting a settlement for a large damage claim, himself signs their forged release as a witness and takes the money. For this combined false pretense and forgery he is merely suspended from practice for a couple of years.[7] The judges in these cases are high-minded men but their legalistic habit of mind, has atrophied their sense of moral values in the field of legal practice."[8]

We have yet to learn the law of disbarment in Missouri;[9] but until a decision has been rendered it seems unnecessary to assume that the *Selleck* and *Sanderson* cases are the law since the statutes passed in 1919.

University of Missouri School of Law. KENNETH C. SEARS.

5. See statement by Goode, J., in *State ex rel.* v. *Sanderson* (1919) 280 Mo. 258, 217 S. W. 60 that a disbarment statute is penal in its nature and not to be extended beyond its terms.

6. Citing, *Matter of Andrew J. Sawyer*, 1 Mich. State Bar Jour. XXVI.

7. Citing, *Matter of Calvin S. Bancroft*, 2 Mich. State Bar Jour. 49.

8. Edson R. Sunderland, 5 The American Law School Review, p. 83.

9. There is nothing in *In Re Sizer* (1923) 254 S. W. 82 dealing with the problem herein discussed.

LAW ENFORCEMENT

There occurred seventeen so-called murders in London last year. Of these, three were committed by unfortunate girls who killed their newborn offsprings; three by men who, in the attempt to commit suicide by the use of illuminating gas, caused the death of a child or other member of the family; two by insane persons; and nine by persons actuated by deeper guilt. In other words, there were only nine cases in the City of London last year where a trial for murder in the first degree could properly ensue. There was not an unsolved murder in London last year. During 1921 there were 260 murders in New York and 137 in Chicago. Throughout all England and Wales in 1921 there were 63 murders.

* * * * * * * * *

It is hardly to be expected that men trained in the courts of this country, inheriting the traditions of the American Bar, should fail to discern what to them may seem shortcomings in the proceedings in the English courts. Our purpose in visiting was to gather if we could material which might be helpful in the solution of the difficult problem here. Our welcome was most generous and the friendship shown us on your account was unfeigned. Criticism here would be purposeless. In comparison with the other great civilized nations the English Government affords to its citizens through the enforcement of its laws a maximum of protection against evildoers. We find the following among other striking contrasts between the English system of dealing with crime and our own.

In England, trial follows arrest so quickly that in the perspective of the public the two are almost simultaneous; while in the United States, trials are frequently so long delayed that witnesses disappear, false defenses are framed, testimony is lost and the public forget the connections between the trial and the circumstances of the crime. We have recent instances of men being executed two and even three years after the commission of their crime.

All the preliminary procedure in England is so simplified as to place no obstacle to the rapid disposition of the case. Little attention is given to technicalities on the trials. The judge in full control of the investigation directs it straight to the heart of the controversy. We saw no long cross-examination and heard no lengthy arguments to the Court or Jury.

In English Courts, as we have shown, Justice is not only swift in its decision but also in the vast majority of instances that decision remains final. Often with us, for purely technical reasons, when the defendant has the means, a first verdict judgment forms merely the preliminary skirmish. Our own Courts of Appeal, too frequently, do not make their chief concern the question as to whether or not Justice was done, but whether the courts proceeded according to the rules.

The trial Judge in England is not a mere moderator with jurisdiction only in wrangles over questions of legal procedure, but rises to an actual force for Justice. In most of the Courts of the United States for a trial Judge to attempt to correct a false argument, to expose a specious plea, even when that plea is having a wrongful effect, for him to expose an effort to inject passion or prejudice, or to arouse sympathy in order to shield the blackest guilt, if the defendant is convicted, may require a new trial.

As important in the enforcement of law as the simplicity and directness of legal proceedings is the efficiency of the police. Scotland Yard deserves its high reputation. Its officers are selected only after the most careful investigation of their connections and their mental and physical conditions. A young policeman chooses the force as a life profession. He is trained scientifically in his duties. His only chance for advancement lies in the fearless, intelligent performance of his duty. He is absolutely independent of political or any inside influence. He is certain of advancement if he earns it and of a pension that will support him when age justifies his retirement. At the head of the police are men of great force, of life-long experience and always of high standing in the community. The department is almost as compact as if it were a military organization. Its skill in unraveling crime and in arresting criminals is remarkable. Only two persons guilty of murder last year in London attempted to escape from England. Escape from the diligence of the Metropolitan police is generally regarded as hopeless. To the police of London must be given a large share of credit for the enforcement of English law.

The above paragraphs are excerpts from the unusually good report of the Committee on Law Enforcement of the American Bar Association. 9 American Bar Association Journal, 660.

COMMITTEE ON AMENDMENTS, JUDICIARY AND PROCEDURE: Chairman, Charles H. Mayer, St. Joseph; J. P. Baker, Fulton; E. L. Alford, Perry; John B. Pew, Kansas City; W. Christy Bryan, St. Louis.

COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR: Chairman, Fred L. Williams, St. Louis; Berryman Henwood, Hannibal; Allen C. Southern, Kansas City; H. J. West, Brookfield; J. H. Haley, Bowling Green.

COMMITTEE ON BAR ASSOCIATIONS: Chairman, Daniel G. Taylor, St. Louis; L. Newton Wylder, Kansas City; Alroy S. Phillips, St. Louis; L. H. Breuer, Jefferson City; Lee B. Ewing, Nevada.

COMMITTEE ON LEGAL PUBLICATIONS: Chairman, Charles W. German, Kansas City; C. D. Capelle, Independence; Charles H. Daues, St. Louis; Politte Elvins, Bonne Terre; L. Cunningham, Bolivar.

COMMITTEE ON GRIEVANCES AND LEGAL ETHICS: Chairman, Forrest C. Donnell, St. Louis; George H. English, Kansas City; John P. McCammon, Springfield; I. N. Watson, Kansas City; Platt Hubbell, Trenton.

COMMITTEE ON UNIFORM STATE LAWS: Chairman, Pierre R. Porter, Kansas City; Charles M. Hay, St. Louis; David Proctor, Kansas City; Don O. Vernon, Lebanon; Jerry B. Burks, Farmington.

COMMITTEE ON LEGAL BIOGRAPHY: Chairman, Shepard Barclay, St. Louis; Judge J. T. White, Jefferson City; W. C. Scarritt, Kansas City; N. T. Gentry, Columbia; Everett Reeves, Caruthersville.

COMMITTEE ON THE ILLEGAL PRACTICE OF LAW BY LAYMEN: Chairman, A. L. Cooper, Kansas City; Edward T. Miller, St. Louis; Charles M. Miller, Kansas City; R. D. Rodgers, Mexico; Ira H. Lohman, Jefferson City.

COMMITTEE ON JUDICIAL CANDIDATES: Chairman, Lee Montgomery, Sedalia; Arthur V. Lashly, St. Louis; Leslie J. Lyon, Kansas City; Clarence H. King, St. Louis; Fred S. Hudson, Kansas City; George R. Ellison, Maryville; Clarence E. Brummall, Salisbury; J. W. Hunter, California.