MISCELLANY.

Public Service, the Highest Ideal of the Bar.[1]—It is estimated that there are about 130,000 lawyers in the United States. Except possibly in the State of Indiana,[2] every one of them must have passed some sort of an examination to meet certain mental and ethical requirements prescribed by law or rule of court. Not only this, but maintenance of the office of attorney or counsellor is dependent upon continued compliance with standards of conduct recognized by the Bar and the Courts. Revocation by the court of the license to practice law, is a recognized means of enforcing compliance with these requirements. Here then is a democratic aristocracy unique in our institutions. It is a democracy, in that admission to its ranks is open to all who comply with the prescribed requirements. It is an aristocracy, in the true sense, being a body of selected citizens, qualified by learning and character to advise upon the laws of the land, and to represent before the duly established tribunals persons who are engaged in legal controversies.

There are two aspects in which the Bar must be considered; one, as a body of men qualified to advise and act for private clients in regard to their legal affairs. The other, as a body of especially qualified citizens, more or less learned in the laws of the land, trained in logical processes of thought, familiar with the Constitution and government of the country and peculiarly competent in various ways to assist in the political conduct of the community.

Two broad considerations, therefore, confront every student of the law. First, there is the predominant need of acquiring such a knowledge of the law as will enable him to meet the tests prescribed as conditions to entering upon the vocation of attorney or counsellor; the knowledge and skill which will enable him to earn a living by advising clients and properly attending to their legal affairs. To a large percentage of students, whatever else may be thought of, this is the prime essential. Probably a great majority of men who study law select that vocation as one of a number of available means of livelihood; a congenial occupation. If that were all, practicing law would differ only in degree, not in kind, from any other vocation—that of a plumber or an opothecary, for example. But it is not all. The practice of the law is a learned profession, requiring for its mastery great and prolonged labor, intense study and concentration. It involves the study of history—the history of civilization, especially of those civili-

[1] This article includes the substance of some remarks made to Harvard Law School students under the auspices of the Law School Society of Phillips Brooks House by Mr. Wickersham in December, 1921.—Ed.

[2] Const. Indiana, § 181. "Every person of good moral character being a voter, shall be entitled to admission to practice law in all courts of justice." But see requirements of Statute (1908, Burns Ann. Stat. § 997, requiring examination "touching his learning in the law."

zations in which our laws have their roots. It involves philosophy; for in the successful application of law to the activities of men, there is implied a knowledge of the operations of the human mind, of the natural conduct of men in association, of the meaning and effects of civilization. It involves the profound and continued study of man. The law is not a fixed body of dogmatic rules. It is as varying as the changing requirements of a progressive civilization. Certain principles it is true have been established by human experience, which may be accepted as fixed stars in the firmament of man's existence. But the constellations are ever changing, and the lawyer who would remain of use in his profession must be alive to these mutations, or his observations will fail the need of his client in his great stress.

Above all things, the practice of the law requires character. For in the adjustment of relations between men, or between man and the state, the character of the adviser or the representatives of the one or the other, often will determine the issue, when the mere application of prescribed dogma would fail. The simplest illustration of this is furnished by the conscientious adviser whose influence settles a controversy which, though he might win it in the end, would cost his client much money, worried days and nights, perhaps the loss of friendships or associations which enrich his life, merely to gratify vanity or a revengeful spirit. To fall in with the client's mood would be profitable. It might afford opportunities for great professional distinction. But if his character be what that of an upright counsel should be, the lawyer never will be influenced in his conduct or advice by the thought of personal gain or glory.

Giving to the preparation for his work as a practitioner the foremost place, recognizing the force it must exert in the early period of his practice, there is another and a higher consideration which must have a place in the thoughts of every young lawyer.

That consideration is the duty which every lawyer owes to the community of which he is a part. The mere fact that he has studied systematically the Constitution and laws of his country and that he therefore understands better than another the bearing of proposed measures of government upon the common weal, imposes upon him a duty to take his part in public affairs and to help make clear to his fellow countrymen the difference between sound and unsound measures of action. Education for leadership in the community is an essential part of the preparation of every lawyer.

It is not necessary that he should seek office. A young lawyer, dependent upon his profession for his livelihood, seldom can afford to accept public office. But there are many other things he can do. He can take part in the ordinary activities of the political party to which he belongs. He can attend meetings of the local political committees or conventions. He can participate in the public discussions preceding elections. He can keep himself informed concerning questions

which from time to time arise for public debate, such as pending legislative measures; as well as regarding the relative merits of candidates for office. There are many prejudiced and many venal counsellors of the public. Not infrequently newspaper advice, counsel or criticism, is influenced by considerations very different from securing the best thing for the public welfare. A clear-headed lawyer who has taken pains to understand a question often may give the public advice so clear, so convincing and obviously so disinterested, that it will prevail over any amount of prejudiced newspaper or other advocacy.

There are many other ways in which the lawyers of the country may render public service. Too often, during the last quarter of a century, have lawyers been identified with the successful exploitation of private interests as against the common weal. The pursuit of gain, rather than the maintenance of the best professional standards has seemed in many instances to be the guiding principle of those who have attained the highest success at the bar. But there is a certain amount of misconception and exaggeration at the bottom of this criticism. For the fundamental principle of professional service must be loyalty to the client and his cause. Very seldom does it happen that a lawyer called into the public service permits his conduct to be influenced by the views or interests of his former clients. On the contrary, he identifies himself with the interests of his new client, the public, with the same loyalty and ardor which made him successful as the representative of private corporate interests. It is in so far as the lawyer employs his talents and his trained intelligence for the public welfare, that he justifies his vocation and enhances the honor and dignity of the legal profession.

The possession of wealth or learning or ability carries with it the obligation to use the one or the other in the public interest.

Willingness to accept public responsibilities and to unite with others in common thought, common will and common action for the welfare of the community, are pointed out by Emil Faguet as the characteristics of true aristocracy![3] It is the public service of the Bar by which it justifies its high position in the American Commonwealth. It is the perpetuation of this ideal of unselfish public service to which the student of law and the young practitioner must look, as the pathway to that kind of success which should inspire his best efforts.—George W. Wickersham in Harvard Law Review.

New Law Unifies Federal Judiciary—Chief Justice Made Executive Head of Judicial Council—Statistics, Meetings, Transfer and Assignment of Judges Provided for.—The judicial system of the United States is unified. Act No. 298, Sixty-seventh Congress, approved Sept. 14, 1922, creates a unified system of trial and appellate courts with statistical records, a judicial council, a chief judicial superintendent and

[3] Et l'horreur des responsabilites, 20.

the transfer and assignment of judges. It embodies the principle of unification in its entirety.

The subject of assisting the United States District courts was before Congress more than a year. Even before the introduction of the bill named for Attorney General Daugherty, and described at the 1921 meeting of the American Bar Association by Chief Justice Taft, it was known that the District courts were in arrears over 120,000 cases. The cause was obvious, for there had been a large increase in statutory offenses cognizable by the courts before the flood of cases under the Volstead Act.

The District courts constituted a loose system of local courts. The pressure of business became much more severe in some districts than in others and there were other variances, but no authority existed to equalize this work or generally supervise the highly important administrative details of the system thus constituted of scattered units.

The accustomed way of meeting a growth of business was to create additional judgeships. This was the sort of work that representatives and senators were familiar with. If no new idea had arisen there would have been merely the usual fight over new judgeships and their appointees, and relief would have been provided more on a basis of political strength and resourcefulness than on existing or expected needs. At this juncture a study of the situation was made under the auspices of the attorney general and with the aid of Chief Justice McCoy of the Supreme Court of the District of Columbia. Chief Justice Taft did not assume that an increase of United States judges, or a possible reconstruction of the system, was wholly a legislative responsibility from which he should hold aloof. On the contrary, he appears to have felt a deep responsibility for the state of affairs and keen interest in methods looking to relief.

The Chief Justice had long been known as a firm believer in improved court organization, in emphasizing administration in the administration of justice. The studies which he had made in this field had convinced him that a great deal of all the remediable defects attributable to American courts have their source in lack of proper organization and centralized authority. In public writings and addresses on judicial administration he never lost an opportunity to express his faith in the principle of unification.

It was singularly fortunate, then, that when the federal trial courts were cracking under undue strain Mr. Taft should have been made administrative head of the entire system. There were, of course, others who appreciated the opportunity for notable legislative advance in respect to the federal courts, but were it not for the great esteem felt for the Chief Justice, and for his tact and persistence, something far inferior to the actual law would have resulted.

As it is, instead of merely providing additional trial judges for certain districts, the act deals with the entire situation. Additional judges

are provided, but this is only a part of the law, for it provides a comprehensive administrative system extending from the Chief Justice, who is made the responsible head, to the trial judges.

Uniform records of business are to be kept and reports made to the Chief Justice as of August 1 in each year. Then in the last week of September the senior circuit judges of all the circuits shall meet with the Chief Justice in Washington to advise as to the needs of their respective circuits "and as to any matters in respect of which the administration of justice in the courts of the United States may be improved. . . . Said conference shall make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for assignment and transfer of judges to or from circuits or districts where the state of the docket or condition of business indicates the need therefor, and shall submit such suggestions to the various courts as may seem in the interest of uniformity and expedition of business."

Emphasis may be laid upon promptness in criminal trials through a provision that the Chief Justice may call upon the Attorney General for a detailed report on pending cases.

These provisions make the Chief Justice head of a unified system, the senior judges of the Circuit Courts constituting with him a judicial council which will receive complete statistical reports and have full power to utilize the judicial power to the fullest extent through the transfer and assignment of judges. The system formerly had some elasticity, but this is extended and means is provided for an orderly and comprehensive administration of the entire system on a basis of adequate information.

Like most reform legislation, this law is tardy. Conditions have gone from bad to worse. The strong arm of the government, never more popularly demonstrated than through the efficiency of criminal procedure in the District Courts, is seen to vacillate. The federal courts are in a very bad way. Delay promotes delay; continuances waste a court's time; delays spawn appeals. The body of judiciary available, even with the accretions soon to be made under the new law, constitute but a very thin line of defense.

But if any way out of the bogs and quicksands can be found it will be found under the powers established by the new act and through the administration of the Chief Justice, to whose intelligence and unselfish effort its passage is largely due.—Journal of American Judicature Society.

Abraham Lincoln's New Memorial.—A work of national historic and patriotic interest has just been completed by what is known as the Lincoln Circuit Marking Association. As the name indicates, the plan was to mark the route travelled by Abraham Lincoln and other famous lawyers in making the rounds of the Eighth Judicial Circuit of

Illinois. Eight years ago the Daughters of the American Revolution undertook the work, which has now been crowned with success by the placing of the last of the granite markers required. The Illinois State Bar Association had a committee for co-operation in this laudable undertaking, and from that report, which was presented at the last annual meeting, we learn that the marking selected for the Lincoln Circuit is three-fold in design and location: (1) A guide post to point the way at all county limits; (2) a more formal marker to be placed at all county seats; (3) the emblem of the Lincoln Circuit Marking Association to be painted on telephone poles at all cross and diverging roads. The guide post at the county limits is to be of ornamental concrete, bearing a tablet with the same inscription as on the bronze tablet at the county seats. The marker at county seats is to be of Greens Landing granite supporting a bronze tablet with the medallion head of Lincoln at the top, under which is to be the inscription:

"Abraham Lincoln
Traveled This Way As He Rode
The Circuit of The
Old Eighth Judicial District
1847-1859
Erected 1921."

—American Bar Association Journal.

"Music Hath Charms."—Have hope all ye who are driven to distraction by the inharmonious "jazz" which emanates unceasingly from the player piano or the "music lover's" victrola in the next apartment. You have suffered long and patiently, and have been deprived of hours of peace and quiet, but your patient endurance, it seems, is about to be rewarded. Relief is on its way. In one jurisdiction at least the mental sufferings of those similarly situated may soon be alleviated, and happiness once more restored to those who enjoy the quietude of their homes and appreciate the refreshing effect of an undisturbed night of slumber. The following judicial decision is the basis for this inspiration:

Stodder carries on a retail shoe business in Boston. The entrance to the Rosen Talking Machine Company's place of business is almost directly opposite the shops of Stodder. The door of the Talking Machine Company's store is 10 feet in from the sidewalk, and the intervening space is in the shape of a trapezoid, 12 feet wide at the sidewalk and 6 feet wide at the door. At about the middle of this doorway space the music company located a Columbia Graphonola for advertising its merchandise, and operated it by an electric motor. A bill in equity was brought, praying for an injunction and damages. The lower court granted an injunction, and the defendant appealed. The Supreme Judicial Court of Massachusetts affirmed the decision in Stodder *v.* Rosen Talking Machine Co., 135 Northeastern Reporter,

251. Judge De Courcy wrote the opinion, and remarked, in part, as follows:

"The machine complained of produced a tone slightly louder than that made by others of the same general type; and the defendant made use of the loud or 'full-tone' needle, and no muffling device. The machine was played substantially all day, from 10 a. m. until 5 p. m. or later, except during cold winter and stormy weather. The records consisted of every variety—singing, speaking, and instrumental—and the music, or 'noise,' was plainly audible in all parts of the premises occupied by the plaintiffs. The continuous and monotonous playing of piece after piece, according to his findings, 'did injuriously affect the employees of the plaintiffs by a gradual wear on their nervous systems, and in some instances producing headaches, in other instances making it most difficult for the person to concentrate on his or her particular work, and in other instances getting the person in a condition such as is generally described with "nerves on edge."'" Further, he finds that the noise of the defendant's phonograph "is a substantial addition to all the other noises absolutely incident to the street; that is, it tends to reduce and diminish the efficiency of the petitioners and their employees by reason of the fact that their minds, and also the minds of customers, are often diverted, and is the cause of some harm and injury to the health and comfort of ordinary persons, and does to some extent interfere with the conduct and business of the petitioner Stodder."

Unique Method of Accepting a Bid.—In the annotation to State ex rel Fitch *v.* State Bd. of School Land Comrs. (Wyo.), 11 A. L. R. 546, the author says:

"An unusual and probably unique method of accepting a bid has been described by Lord Chancellor Eldon. 'When I was attorney general,' said his Lordship in Walker *v.* Advocate-General (1813) 1 Dow. 111, 3 Eng. Reprint, 640, 'they had a case in the exchequer of a female auctioneer. She continued silent during the whole time of the sale; but whenever anyone bid she gave him a glass of brandy. The sale broke up, and, in a private room, he that got the last glass of brandy was declared to be the purchaser.'"