MARION COUNTY BAR ADMISSIONS, 1822-1980

A list of over 8700 attorneys admitted to practice law in the courts of Marion County, Indiana, between September 1822 and early 1980. The list was compiled from a register kept by the Marion County Circuit Court Clerk. Admissions before 1932 were recorded in the order books of the Marion County Circuit, Common Pleas, and Superior Courts. The references are to the volume number and page of the particular order book in which the admission is recorded. Admissions to the bar after 1931 were governed by the rules of the Indiana Supreme Court, which had exclusive jurisdiction to admit attorneys to practice law in all the courts of the state (*Acts of Indiana, 1931, Chapter 64, p. 150*).

On the opening day of the Marion County Circuit Court, September 26, 1822, Calvin Fletcher, Hiram M. Curry, Obed Foote, James Noble, Daniel B. Wick, Oliver H. Smith, James Rariden, James Whitcomb, Lot Bloomfield, Harvey Gregg, and John A. Brackenridge were admitted to practice.

Persons interested in copies of bar admissions recorded in Marion County court order books before 1932 should contact the Marion County Circuit Court Clerk, Microfilm Archive, B-31 City-County Building, Indianapolis, IN 46204, either by telephone at (317) 327-4962, or online at http://www.indy.gov/eGov/County/Clerk/Pages/home.aspx

11. CONSTITUTIONAL LAW—*Amendments to Constitution—Submission to Popular Vote—Number of Votes Required For Adoption.*—Under the provisions of Art. XVI, Indiana Constitution, a proposed amendment thereto, when submitted to the electors of the state, requires for adoption only a majority of the votes cast for and against the particular amendment, whether its submission be at a general or a special election. p. 194.
12. CONSTITUTIONAL LAW—*Amendments to Constitution—Submission to Popular Vote—"Electors of State."*—Provision of Art. XVI, Indiana Constitution, that proposed constitutional amendments shall be submitted to the "Electors of the state" and that adoption shall require approval of a "majority of said electors," *held* construable as referring to that group of electors who vote upon the amendment as opposed to that group including all persons possessing the qualifications of voters, in view of the generally recognized rule that election results are determined by that group of electors or voters who exercise their right of suffrage. p. 195.
13. CONSTITUTIONAL LAW—*Amendments to Constitution—Submission to Popular Vote—Constitutional Qualifications to Practice Law.*—Amendment to repeal section 21 of Art. VII, Indiana Constitution, providing qualifications for admission to practice law, *held* adopted at general election on November 8, 1932, where a majority of those voting on the amendment favored its adoption, notwithstanding the number favoring adoption was not a majority of the number voting for political candidates at such election. p. 205.
14. ATTORNEY AND CLIENT—*The Office of Attorney—Admission to Practice—Power of Supreme Court to Regulate.*—The constitutional provision that "every person of good moral character, being a voter," was entitled to admission to practice law having been repealed the Supreme Court has the power to enforce its rules regulating admission to practice law and to require applicants to take an examination for the purpose of testing professional fitness. p. 205.

Original petition by Lemuel S. Todd for admission to practice law in Indiana. *Petition dismissed.*

Lemuel S. Todd, for petitioner.

TREANOR, J.—The General Assembly of 1931 enacted the following:

"The Supreme Court of this state shall have exclusive jurisdiction to admit attorneys to practice law in all courts of the state under such rules and regulations as it may prescribe." Acts 1931, ch. 63, p. 150.

In July, 1931, this court adopted rules regulating admission to the practice of law in Indiana. Under these rules an applicant is required to take an examination to determine his professional fitness. Petitioner, Lemuel S. Todd, insists that under §21, Art. VII, of the Constitution of Indiana neither the

General Assembly nor this court can require of applicants an examination for the purpose of testing professional fitness.

Amici curiae, representing the Indiana State Bar Association, suggests that the petition be dismissed, supporting their suggestion by brief. The position of *amici curiae* is in substance as follows:

1. The rules of this court, as to their substantive requirements, are valid, being a reasonable means of ascertaining the "good moral character" and residence of the applicant and consequently do not violate §21, Art. VII.
2. Section 21, Art. VII, of the Constitution of 1851-2 was stricken from the Constitution by amendment at the general election November 8, 1932.

If §21 of Art. VII of the Constitution of 1851-2 was stricken from the Constitution by amendment at the general election November 8, 1932, there can be no question about the power of this court to make and enforce the rules of which applicant complains. The vote upon the amendment in question was 439,949 for adoption and 236,613 against. Thus a majority of the voters who voted upon the amendment favored its adoption. But the number of voters favoring its adoption was much less than half the number of voters who voted for political candidates at the general election. Consequently to hold that the amendment was adopted it would be necessary to overrule the cases of *State* v. *Swift,*[1] *In re Denny,*[2] and *In re Boswell,*[3] which have announced the rule that a proposed amendment which is submitted to the electors at a general election fails of adoption unless it is approved by a majority of all the voters who vote at the general election.

When the overruling of previous decisions involves only a
1. question of public interest in no way affecting private interests the rule of *stare decisis* does not control.

"The case of *House* v. *Board, etc., supra,* and cases following, do not involve property rights, nor has the rule, which they declare, in any sense become a rule of property, or a basis for contracts. The overruling of those cases will not produce uncertainty in titles, or introduce doubt and confusion in questions of property or contracts. Under such circumstances, it is the duty of the court to correct its own errors, and the doctrine of *stare decisis* can not be successfully invoked to perpetuate them."[4]

Note 1. (1880), 69 Ind. 505.
Note 2. (1901), 156 Ind. 104, 59 N. E. 359, 51 L. R. A. 722.
Note 3. (1913), 179 Ind. 292, 100 N. E. 833.
Note 4. Board of Commissioners of Jasper County v. *Allman* (1895), 142 Ind. 573, 594, 42 N. E. 206, 39 L. R. A. 58.

Mandel E. Gilman (Socialist), 19,000; and Charles Anderson (Nationalist), 2,000.[20]

In just two short years and two elections, the Supreme Court had seen a turnover of four of its five members and a shift from five Republicans to four Democrats and one Republican. Yet, while the political affiliation of the jurists changed from election to election, the Court seemed to be moving away from active political involvement. The Shumaker case was a prime example. Judge Willoughby, stern and uncompromising, refused to yield to the political pressures of the Anti-Saloon League. By the same token, the organized bar and prominent lawyers were beginning to take steps to remove or at least dissociate the courts from active political participation. As will be seen, there were many attempts to accomplish this throughout the 20th century.

The group of jurists which gathered in January, 1933, to carry on the business of the highest court in Indiana faced a question with a long history. The 1851 Constitution provided that all persons age 21 or over, of good moral character, bona fide residents and voters of the State of Indiana could be admitted to the practice of law. Under this provision and various statutes and court rules, the circuit courts of the State could admit attorneys to practice. This, of course, could create problems if one court admitted a person and another court, for some reason, refused to admit the person. The problem was resolved in 1931 when a constitutional amendment gave to the Supreme Court the authority to govern admissions to the practice. On November 15, 1933, the Court adopted rules to govern bar admissions. For the first time in the history of the State, those desiring to practice law in Indiana would be required to take a "bar exam" for the purpose of testing their fitness to practice law. The exam was not required, though, for any practicing lawyer who had been admitted to the bar prior to July 1, 1931. A state board was created to write, administer and grade the examinations.[21]

But the struggle by the organized bar to reform legal education and to regulate the practice of law was not over yet. One more hurdle had to be cleared: In Re Todd. The Todd case arose after the amendment had been ratified and after the Supreme Court had adopted its rules to implement the new constitutional provision. Todd petitioned the Court for admission to the bar based on the standards in the 1851 Constitution; i.e., he was 21 years of age and of good moral character. Todd's attorney claimed the new constitutional amendment had not passed since it had only received a majority of those voting on the proposed amendment rather than a majority of all those voting at the election. The Supreme Court made short order of Todd's argument. The Court, with a stroke of the pen, overruled the troublesome State v. Swift, which required a majority of all those voting at the election, and held that to be adopted, an amendment need only receive a majority of those votes cast for or against the amendment.[22]

Newspaper reaction was mixed. The Indianapolis Star noted that the decision "simplified some administrative problems." The News assailed the opinion. The Court, said the News, had caused a "disquieting" popular impact which left all the currently proposed amendments in "quicksand." Further, the editorial continued, the Court "may have opened the floodgates to a deluge of visionary amendment proposals of no merit."[23]

The Democratic governor and legislature were no more kind to the decision. Many legislators were said to be be-

20. Indiana Yearbook, 1932 (Indianapolis), pp. 1478-1495.

21. The Court also adopted a new oath of attorneys to be taken upon admission to practice law. The oath used prior to this time was a brief recital required by the Acts of 1881 that the attorney would support the Consitutions of the United States and the State of Indiana and that he would faithfully and honestly discharge his duties as an attorney at law. The American Bar Association adopted a new, more encompassing oath in 1908 and recommended it to the states. Indiana did not change its oath until the Supreme Court adopted Rule 41-22 on November 15, 1933:

    Rule 41-22. "Upon being admitted to practice law in the State of Indiana, each applicant shall take and subscribe the following oath or affirmation, viz.:

    "I, ..., do solemnly swear (or affirm) that I will support the Constitution and laws of the United States, and the Constitution and laws of the State of Indiana; that I will demean myself as an attorney at law of this Supreme Court and all other courts in the State of Indiana, uprightly, and according to law, and maintain the respect that is due to the courts of justice and to judicial officers; that I will counsel or maintain such actions, proceedings or defenses only as appear to me legal and just; that I will employ, for the purpose of maintaining the causes confided to me, such means only as are consistent with truth, and never seek to mislead the court or jury by an artifice or false statement of fact or law; that I will maintain inviolate the confidence, and, at every peril to myself, preserve the secrets of my clients; that 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 such party or witness is charged; that I will not encourage either the commencement or the continuance of an action or proceeding from any motive of passion or interest; that I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed."

    These rules shall be in full force and effect from and after June 13, 1936.

    The rule was amended in 1940, 1954, and several other times in slight respects, but the basic framework of this original oath is intact today. Supreme Court Rule 41-22 (November, 1933); Acts 1881, Civil Code, Chapter 38; Robert J. Fair, "The President's Message", Res Gestae, XXII, (1978), p. 333. These materials and a background of the oath of attorneys were provided by James E. Farmer.

22. In Re Todd, 208 Indiana Reports 168 (1935).

23. Indianapolis Star, January 31, 1935, p. 6; Indianapolis News, January 31, 1935, p. 6.

Sept Term 1822 - ~~[illegible]~~ → Sept. 26. 1822

P. 5 Calum Fletcher, Hiram M. Currey, Obed Foote, Daniel B. Wicks, Oliver H. Smith, James Noble, James Rariden, James Whitcomb, and Lot Bloomfield, present their licenses to practice as attorneys and counsellors at law . . . ,

and Harvey Gregg . . .

" admitted to practice . . . at the bar of this court. "

and,

John A. Brackenridge

CHAPTER XLII.

COURTS, BENCH AND BAR.

Judge Wick took his oath of office before Judge Miles Eggleston, of the Third Circuit, on February 12, 1822, but as the associate judges were not elected in time for the spring term, no session of court was held in Marion County until Thursday, September 26, 1822. On that day the court assembled at John Carr's house, but it was too small for court sessions, and all that was done there was to organize formally, in compliance with the law, which called for sessions there "until a more convenient room can be had". Court was duly opened in the presence of Judge Wick and associate judges James McIlvain and Eliakim Harding. The judges, Clerk James M. Ray, and Sheriff Hervey Bates, presented their commissions and took the oaths of office, including the oath against duelling, which was very stringent. Fourteen rules of practice were adopted, and the following attorneys were admitted to practice: Calvin Fletcher, Hiram M. Curry, Obed Foote, Daniel B. Wick (a brother of the judge), Oliver H. Smith, James Noble, James Rariden, James Whitcomb, Lot Bloomfield and Harvey Gregg. All of these except the first three and the last were non-residents. It has often been stated that Calvin Fletcher was "the only lawyer" in the early settlement, but in a letter written by him on January 17, 1822, he says: "We have two attorneys here besides myself—one was here when I came, and one has come since". Rev. J. C. Fletcher conjectures that the one who came first must have been Curry, as he understood that Foote came shortly after his father. This is probably correct. Mr. Fletcher came here first in August, 1821, and went back to Ohio for his wife, returning for settlement on September 28 of that year. The exact date of Foote's arrival is not known, but he was here at the sale of lots in October, 1821. Curry did not appear much in practice, as he took the position of deputy clerk under James M. Ray, and went farther west at an early day. Mr. Fletcher mentions meeting Harvey Gregg here on December 31, 1821, on an investigating visit, and says that he returned the next spring for settlement. But Nowland says that Gregg was here at the sale of lots in October, and gives a family tradition of his hiding some money under the carpet at Nowland's Tavern, where he lodged, and forgetting about it.[1] In the afternoon of the first day, John A. Breckenridge of Kentucky was admitted to practice "ex gratia". He located here soon after, and was for a time a partner of Mr. Fletcher.

After the admission of the lawyers, the Court adjourned to meet in the afternoon at the house of Jacob R. Crumbaugh, the second justice of the peace at Indianapolis, which was at the southwest corner of Market and Missouri streets, and the remainder of the session was held there. The first business of the afternoon was the presentation by the sheriff of "good and lawful men and discreet householders to serve of grand jurors", in the persons of Joseph C. Reed, who was made foreman, Jeremiah Johnson, Isaac Wilson, George Smith, Asahel Dunning, Daniel Pattingale, Wm. D. Rooker, Alexis Jackson, Peter Harmonson, Aaron Lambeth, James Givan, Thos. O'Neal, Archibald C. Reid, Daniel Yandes, and John Packer. The machinery for criminal business was completed by appointing Calvin Fletcher prosecuting attorney.

The court next gave its attention to the establishment of "prison bounds" for insolvent debtors, an important matter at that time, for

[1] *Reminiscences*, p. 143.

IN THE

SUPREME COURT OF THE STATE OF INDIANA

TERM, 19 80

Judicial Day June 10, 19 80

IN THE MATTER OF
THE APPLICATION OF

Steven Allen Spence
FOR ADMISSION TO THE BAR

On this day personally appeared in open court the above named applicant of Marion County, Indiana, and it appearing to the court that the State Board of Law Examiners for the State of Indiana, after due investigation as to moral character and fitness and after an examination to determine their professional qualifications, has duly certified to the court that fact that such applicant has met the requirements for admission to the bar under the law and rules of this court, said applicant is, on the motion of

George N.Craig

a member of the bar of this court, and by order of this court, duly sworn and admitted to practice as an attorney of law and his name ordered entered on the roll of attorneys.

(Signed) Richard M.Givan

Chief Justice

STATE OF INDIANA
SS
SUPREME COURT

I, *Marjorie H. O'Laughlin,* Clerk of the Supreme Court of the State of Indiana, do hereby certify that the above and foregoing is a true and correct copy of the record of the court in the matter of admission of

Steven Allen Spence

and that same is transmitted to the Clerk of Circuit Court for the purpose of authorizing said Clerk to enroll said Steven Allen Spence on the official roll of Attorneys as a duly qualified member of the bar for the active practice of law in

Marion Circuit Court

and all other courts in the State

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 10th day of June, 1980.

Marjorie H. O'Laughlin
CLERK SUPREME COURT