Indiana Law Journal

Volume 12 | Issue 3 Article 4

2-1937

Proceedings of Mid-Winter Meeting

NEW FEATURES TO BE ADDED TO THE LAW JOURNAL

Beginning with the next issue of the Journal, two new features of the Journal will be added for the information of the members of the Association.

First, there will be published in each issue of the Journal a list of the judges and court officials of the various courts throughout the State.

Second, a list of the presidents of all of the district, county, and city bar associations of the state will be published in each issue of the Journal.

It is hoped to have the material for this latter list for publication in this issue of the Journal, but the information at hand at this time is far from complete. It will be much appreciated if all bar associations that have not heretofore reported, will furnish to Mr. Thomas C. Batchelor, Secretary, Union Title Building, Indianapolis, the name and address of its president at once.

Editor.

PROCEEDINGS OF MID-WINTER MEETING

Welcome and Response

The mid-winter meeting of the Indiana State Bar Association was held at the Claypool Hotel, Indianapolis, Indiana, January 16, 1936, President Albert H. Cole presiding. Despite the fact that the southern part of the State was suffering from severe floods and the northern part was covered with snow and ice the meeting was well attended.

Mr. Russell Willson of Indianapolis, President of the Indianapolis Bar Association, exhibited his well known cordiality and wit in welcoming the Association to Indianapolis and in tendering to the visiting members the key to the city in so far as any right, title or interest in or to said key is vested in the Indianapolis Bar Association.

Mr. Joseph A. Andrew of Lafayette on behalf of the State Association responded, accepting the hospitality and emphasizing the pleasure and advantage which comes to the lawyers who attend these meetings in renewing old and making new acquaintances and friendships.

Report of Committee on Legal Education

Dean Thomas F Konop of the Notre Dame School of Law, and Chairman of the Committee presented the following report:

By Supreme Court Rule 41-11, the Supreme Court of Indiana has in substance adopted the standards of the American Bar Association for admission to the bar. This rule went into effect June 13, 1936. At that time, there

were three approved law schools in Indiana, namely: Indiana University, University of Notre Dame and Valparaiso University. On December 29, 1936, the section on Legal Education of the American Bar Association provisionally approved the Indiana Law School of Indianapolis, so there are now in this state four law schools which meet the requirements of Supreme Court Rule 41-11.

Since the adoption of Rule 41-11 your Committee has been rather inactive and members of the Committee are of the opinion that definite recommendations of your Committee on Education be postponed.

However, it must be remembered that the standards adopted, are but minimum standards. The matter of adequate preparation for the practice of law cannot remain static. At this time there are fully one-third of the approved law schools of the country that are requiring at least three years of college work for admission. Law schools of the Indiana University and of the University of Notre Dame now require three years of college work for admission.

There are other matters in the field of legal education besides fixing standards that might well be given consideration by the State Bar Association. With changes in our social conditions, changes are taking place in the practice of law. Although the matter of law teaching is primarily for the law schools, judges and practicing lawyers are in a better position to learn what these changes are and suggestions from them as to the content of the law courses would be of value. A study of the advisability of providing legal clinics or interneships for the seniors and law graduates might be of interest both to the law schools and the profession. Then, too, there ought to be cooperation between the approved law schools and the admitting authorities in the matter of content of law courses and of investigation of the moral character of the applicants for admission to the bar.

At a recent meeting of the Association of American Law Schools, the Committee on Bar Admissions, after thorough investigation and study, presented a comprehensive report which will soon be available to those interested in legal education. In this report, that Committee stated that the work of bar examiners is but a continuation of the process of legal education and that the establishment of sound legal training and adequate tests for admission to the practice of law are the common objectives and the joint responsibility of examiners and the law schools. This Committee recommended the creation of a Joint Advisory Committee representing bar examiners and the law schools.

On July 13, 1934, the Indiana State Bar Association adopted Article 22 of the By-Laws. This Article provides for a Joint Council on Legal Education consisting of a committee of deans of the approved law schools and the Committee on Legal Education of this Association. The Article also provides for a meeting with the members of the Supreme Court and the Board of Law Examiners for the purpose of discussing legal education and standards and requirements for admission to the bar. There is no reason why the Joint Council on Legal Education cannot serve as a "Joint Advisory Committee" suggested in the report. While your Committee has no definite recommendations to make, we suggest that, in the near future, a meeting of the Joint

Council on Legal Education be held, so that some of the recommendations of the Committee on Bar Admissions might be carried out.

The report was regularly adopted by the Association.

Report of Membership Committee

Mr. Louden L. Bomberger of Hammond, Vice President of the Association and Chairman of the committee reported as follows:

Since the last meeting there have been added 33 regular, 34 junior and 56 student members, but what is more to the point is the fact that each committeeman, that is to say, one man in each congressional district, has thoroughly organiztd his district and there is, therefore, in every county and in the larger cities, where there are more than one in the county, someone who is a sort of sub-committeeman, charged with the responsibility of the work of this committee.

We also wish to say that the large addition of junior members has come through very, very emphatically, I should say, by the very gracious letter sent by our President to all who passed the state bar examination in July. Out of 90 some we have been able to list 34 as members of the Association.

We are particularly gratified by the young men coming in because we really feel they are the ones who not only carry on to a large extent now, but will become increasingly more important.

Report of Young Lawyer's Committee

Mr. Richard S. Melvin of Gary, Chairman, read the following report of the committee:

The Committee reported to the Association at last summer's meeting that the two basic objectives of the Committee were (1) to increase the membership, attendance and interest in the Association among the younger lawyers and (2) to stimulate cordial relationship among these members.

With reference to the first objective, the most recent count of the young lawyers in the Association shows an increase from the summer session of 1936 to 337 members (junior). Since the personnel of the Committee was entirely changed in August, 1936, the Committee has not had an opportunity to meet until shortly before this meeting and has not evolved definite plans to increase the membership of the younger lawyers in the Association. The Committee intends to ask the President of the Association to appoint six more members to the Committee from districts in which the Committee will apportion the State with the idea of carrying on a vigorous campaign in the next few months to increase the membership of the Young Lawyers in the Association, and to keep in close contact with the present young lawyers.

As to the second objective, the Young Lawyers' Committee is sponsoring a smoker for the young lawyers as part of the program of this meeting. The smoker will be held at four o'clock in the Florentine Room on the Mezzanine Floor of the Claypool Hotel. The Committee believes that this arrangement will prove a satisfactory one for the young lawyers will have a chance to

meet together without leaving a regular session of the Association. Mr. Chase Harding of Crawfordsville has kindly consented to address the group at that time and the Junior Bar Conference of the American Bar Association for the State of Indiana will meet with the Young Lawyers' Group at that time.

At the meeting of the Young Lawyers' Group last summer, a resolution was passed to the effect that a recommendation should be made to the Association to increase the number of members of Young Lawyers' Committee from six to twelve—that there should be one member for each district in the state. The Committee is of the opinion that this resolution was rather hastily adopted and not properly considered with the idea of evolving the most efficient organization possible for the Committee. The Committee believes that the Congressional Districts of the State are unsuited for our purpose because of the amount of territory that some of them take in. It seems that a Committee in some of the districts of the state would have small opportunity to contact the young members within his district. The Committee believes that a better method of apportioning the state into districts is possible to serve our purpose. For that reason, the Committee is not submitting the resolution adopted at the summer session of the Association at this time.

The report was adopted.

Report of Committee on Legislation

Dean Joseph G. Wood of Indiana Law School, Indianapolis, and chairman of the committee presented its report, which is as follows:

The Board of Managers of the Indiana State Bar Association met in Bloomington in October and, after due consideration of a legislative program, agreed that only one bill would be presented to the Legislative Session of 1937. That bill is the so-called "Rule Making Bill," being the same bill that was introduced before the last regular session of the Legislature in 1935. The Board of Managers considered the propriety of further legislation but felt that the Association should confine its efforts to the Rule Making Bill.

After presenting the written report Dean Wood made a statement as to the activity of the committee, the Board of Managers and others in their endeavor to secure the passage of the Rule Making Bill.

A question was raised as to whether the determination of the Board of Managers and the committee to sponsor no other bill should be construed to mean that the committee would not take an interest in other bills pertaining to legal education and similar matters of interest to the legal profession.

President Cole answered that in the opinion of the Board of Managers this bill was defeated two years ago largely because it was hooked up with the Integrated Bar Bill also sponsored by the committee which latter bill was not popular with many lawyers at that time.

He stated the Board felt that by sponsoring the one bill its chance of passage would be enhanced.

The same question was again raised later in the meeting and the following resolution was adopted:

That it is the sense of this Association, although the Association has adopted the single project on its legislative program, this shall not be construed to limit the Board of Managers nor the Legislative Committee or to abridge their power to oppose any legislation deemed to be inimical to its interests or to the practice of law in Indiana, nor to prevent it from giving assistance to any legislation which it deems to be helpful to the practice of law.

Report of Committee of Grievances

Mr. Woodson S. Carlisle of South Bend, Chairman, presented the committee's report which is as follows:

Your Committee has received, or has had referred to it from its predecessor, twenty-one complaints against lawyers practicing in Indiana. These complaints have originated from three sources, namely·

From individual clients complaining that they cannot get action from lawyers to whom they have paid fees;

From lawyers out of the state who have referred business to a lawyer within the state, and complain either because they cannot get action or because they feel that they have not received the proper division of fees;

From commercial law lists who complain because a lawyer handling a collection item either has received a cost deposit and has thereafter failed to file suit, or because the collection has been made and not remitted.

All of these complaints have been investigated or are being invesigated, regardless of whether or not the lawyer complained of belongs to this Association. In many instances the matter has been satisfactorily adjusted, in others, it is now in process of adjustment.

A substantial number of complaints have been found to have no merit. In no case has the Committee felt that it should recommed disciplinary action, particularly in view of the obvious inadequacy of our statutes covering disbarment.

American Bar Association's New Constitution

President Cole made the following brief resume of the changes made in the governing body of the American Bar Association by its new constitution adopted at Boston last summer:

Since the last meeting of the Indiana State Bar Association, held at Lake Wawasee last summer, there was adopted by the American Bar Association a new constitution. That constitution was adopted at the annual meeting of the American Bar Association in Boston last September, or perhaps the latter part of August.

For the first time, there is a definite connection between the American Bar Association and the State Bar Associations. The new constitution provides that the governing of the American Bar Association, its governing body, shall be a House of Delegates, consisting in all of perhaps somewhere between 150 and 200 members. It includes from each state a state delegate, elected

by the members of the American Bar Association residing in that state, whether or not they be members of the State Bar Association. It provides for at least one state bar association delegate to be elected by the State Bar Association in such manner as it shall determine.

It further provides that where the membership of a state bar association exceeds a certain number that association shall be entitled to one additional delegate, with the proviso that local bar associations with a membership of more than a certain number shall likewise be entitled to a delegate.

It so happens that there is in this state no local bar association with the requisite number of members to entitle it to a delegate in this National House.

The constitution further provided that the President of the State Bar Association should be the State Bar Association delegate until his successor should be elected. The Board of Managers very kindly and graciously authorized the President of this Association to appoint the other delegate, our Association being now entitled to two delegates.

After consulting with some of the officers of the Association, it was my very happy privilege to select, until such time as a delegate is elected by the Association, Milo Feightner, of Huntington, the Chairman of the Board of Law Examiners, as the additional delegate.

The State Delegate is Mr. Eli F. Seebirt, of South Bend, who holds that office by reason of his previous membership in the Council, or some other body of the American Bar Association, whose name I am not sure about now.

Report of Meeting of American Bar Association House of Delegates

Mr. Milo Freightner of Huntington made the following statement in part concerning the meeting of the House of Delegates of the American Bar Association held at Columbus, Ohio, January 5-7, 1937:

As stated by Mr. Cole, the three delegates from Indiana were present at this meeting in Columbus, Ohio, on January 5, 6, and 7. I believe that the House of Delegates consists of 165 members, and that every State in the Union was represented at the meeting. I believe Hawaii, Porto Rico and Alaska were not represented.

Mr. Morris of the District of Columbia presided over the meeting of the delegates. I believe according to the set-up that the president of the American Bar Association has authority to preside over the House of Delegates if he sees fit to do so and during this meeting at Columbus Mr. Stinchfield of Minneapolis, president of the Association did preside part of the time. One of the important things that was done was to discuss or rather revamp some of the rules governing the proceedings, the organization, etc., of the House of Delegates. Some changes, though no very material changes, were made in these rules.

Other matters came before the body such as discussion and reports on patent and maritime laws, etc. In my opinion, however, the most interesting discussion that came before the House was the question of election of judges—the discussion of plans to get the election of judges out of politics. This discussion lasted for a considerable part of one day, and there were present and participating in the discussion a number of delegates who represented

states where the judges are not elected at partisan elections. You will recall that there are now thirteen states in which judges are not elected upon partisan ballots. There was a great variety of notions about how we were going to get the election of judges out of politics. In fact, there seemed to be about as many remedies or plans as there were speakers on this occasion.

This discussion and the interest of the delegates shown in the subject made me think that this question is one of the big things that confronts the American Bar today. However we may feel about the proposition, it is one thing that the Bar of the United States must take in hand. Whether it will be adopted or another plan worked out, I do not know. Personally I am very much in favor of changes in the election of judges at special elections to get the election of judges out of politics. The fact that the American Bar Association is showing the great interest in the proposition makes me think that within the next few years this State Bar and the state bars of all of the States, for that matter, are going to become interested; and that eventually some plan is going to be worked out so that we will get away from this present system of politically elected judges.

I know the new set-up of the American Bar Association is a complicated one and it is going to take sometime to work it out before it functions properly. I believe the lawyers will eventually work it out so that it is satisfactory and so that it will be an organization that means much for a better administration of justice in the United States. I believe the American Bar Association has a great future before it.

I am not sure just when the next meeting of the House of Delegates will be held. Perhaps it will not be until the regular meeting of the Association in Kansas City in the month of September.

In conclusion, I desire to report one matter to you that seemed to be a source of considerable disturbance to the delegates. That matter is the proposed new American Bar Association that now seems to be on foot. I believe some sort of an organization was formed at Washington, D. C., sometime the latter part of last month. It was looked upon with some degree of criticism at this meeting at Columbus. The delegates did not seem to know why this organization was being fostered, except that some of the leaders had made rather vague statements that the American Bar Association was not functioning properly and not performing the functions and duties which they should perform.

I understand this organization is to have a membership fee of one dollar and they are going to attempt to enlist as many lawyers all over the country as they can. The general impression prevailed that it is an organization which is hostile to the American Bar Association. No doubt you will hear a great deal more of this proposed organization in the very near future.

Resolution for Election of Association's Delegates

Mr. John M. McFaddin of Rockville presented a resolution which had previously been approved by the Board of Managers providing the method of electing delegates to the House of Delegates. Upon proper motion this resolution was adopted by the Association, and is as follows:

Whereas, at the annual meeting of the American Bar Association held in the City of Boston in the month of August, 1936, said Association adopted a new constitution providing for a House of Delegates in which the Indiana State Bar Association is now entitled to two Delegates to be chosen in such manner as said Indiana State Bar Association shall determine, such Delegates to serve for the term of two years and until their successors shall have been certified, now

Therefore, Be It Resolved, that said Delegates shall be nominated and elected at the times and in the manner provided for the election of the officers of the Indiana State Bar Association by Article V of its Articles of Association as amended at its annual meeting in 1936.

Annual Meeting, Place of Holding

President Cole requested that the place of holding the Annual Meeting next summer be discussed to the end that the Board of Managers be fully advised of the wishes of the members. For sometime there has been under discussion the question of a Great Lake Cruise of three days and the holding of the meeting aboard ship. Secretary Batchelor reported that he had received responses from nearly four-hundred members of the Association to the questionnaire previously sent out by him to all members of the Association. He further reported that three hundred twenty-seven members favored the cruise and fifty-two members opposed it.

Following this report there was discussion by several members. The discussion was concluded by the adoption of a motion made by Mr. William H. Hill of Vincennes "that the matter of the place of holding the Annual Meeting be left to the judgment and discretion of the Board of Managers."

Report of the Judicial Council

Hon. Curtis W. Roll, Judge of the Supreme Court of Indiana and Chairman of the Judicial Council gave the following report:

The Judicial Council for the past year, more especially the past few months, has given its attention to a bill sponsoring the election of judges on a non-partisan ballot. The bill was drafted and at the last meeting of the Council, it was decided to sponsor this bill. This bill provides for the election or nomination and election of Prosecuting Attorneys, the Circuit Court, the Probate Court and the Criminal Court, and the Superior Court Judges on a non-partisan ballot. That was the bill that was drafted by the Judicial Council.

The Council did not include in its bill the election of judges of the Appellate or Supreme Court. Apparently, of course, there is no reason. In fact, it seems that if there is any judge to be elected on a non-partisan ballot, it should apply with more force to the Appellate and Supreme Court judges, rather than to the local judges.

The reason the Supreme and Appellate Court Judges were not included in our bill was the fact that we felt the machinery for nominating them would be rather cumbersome, subjecting the judges of the Supreme and Appellate Court probably to a state-wide primary, which would be very expensive and require a great deal of time, if the judge of the Supreme and Appellate Court were a candidate for the nomination would be subjected to making a statewide campaign for the nomination.

It seemed to be the consensus of opinion that a statewide primary for a state officer was just not the most desirable thing, that past experience did not show that a statewide primary for a state office was just as satisfactory as it might have been. So, for that reason, the Council did not include in its bill such a provision. Of course, the local judges and prosecuting attorneys, are subject to their primary campaign in their respective counties. I understand from a bill that has been introduced, the Supreme and Appellate Court Judges are included now in the proposed bill that is before the Legislature, that they are nominated by primary in the district in which they live. Whether or not that is a desirable thing, I am not prepared to say. The reason for sponsoring this bill—and this is the only bill the Judicial Council has officially gone on record as sponsoring—personally, there are other bills that the members of the Judicial Council think should be passed, but we confine our efforts to this one bill.

Another bill which we contemplated and probably thought should be supported, had to do with the reorganization of courts. We didn't prepare any bill upon that subject because we felt that any attempt to reorganize the courts, and especially the courts of appeal, would necessitate, and should at least have, very careful consideration. Whether or not there should be intermediate courts drafted along the line of the Ohio or Missouri or some of the other states that have intermediate courts and provisions for a review by the Supreme Court upon writ of certiorari; that to draft such a bill would require more time than we had at our disposal and, therefore, we did not attempt to draft a bill covering that.

We did not make any recommendation as to procedure, either our civil procedure or appellate procedure. That would require more time than we had. We felt that any attempt along that line to make a comprehensive code along civil and appellate procedure would mean a great deal of work and enlist the services of several lawyers. Since we had little time, we did not make any effort along that line. The second reason for not making any recommendation as to procedure was that we understood there would be a proposal to give to the Supreme Court the responsibility of making rules of procedure, in which event, of course, it would be unnecessary, then, to make a comprehensive code, and we would wait also upon the rules as announced by the Supreme Court of the United States, which we understand would be available during this year.

So, therefore, we confined ourselves to this one proposition of electing judges on a non-partisan ballot.

Now, of course, understand also that the provision of the bill that is now introduced provides that the judges of the Supreme and Appellate Court and the other judges, all the offices coming within the provision, shall be nominated on a non-partisan ballot, as well as elected in the fall, on a non-partisan ballot.

No doubt there are certain objections that could be urged to this procedure, and the Judicial Council recognized that while there might be some defects, some objectionable features to a bill of this kind, yet they felt that, taking it all in all, it would be an improvement over our present methods.

Those are questions, of course, that might be subject to debate, and I do not know of any better place than at the State Bar to have a discussion upon the merits of such a bill.

Now, that is in substance the work that the Judicial Council has done up to the present time. We would be very glad to have a free discussion of this proposition, and would like to get the reaction of the members of the State Bar upon this.

Report of Special Committee on Uniform District Bar Organization

Mr. Aaron H. Huguenard of South Bend, Chairman of this special committee presented the following report:

Since the presentation of its report at the last annual meeting your Committee finds that several meritorious objections have been made to its recommendation that district bar associations co-terminus with the Indiana congressional districts be organized. It appears that while some congressional districts may be suitable for proper units of organization, others are not. For this reason your Committee deems it advisable to revise the recommendations submitted in its report at the last annual meeting.

Your Committee believes it wise to urge the development of a better acquaintance and friendship among the lawyers throughout the State. Lawyers should make a special effort to know as many of their brethren as possible, in order that they may appreciate and be of mutual assistance in solving the problems which confront the Bar. Above all it should be recognized that the State Bar Association is the best instrumentality for the protection of the individual lawyer and that the activities of minor bar associations, no matter what the basis for the unit of the organization is, should be largely undertaken with the aims and purposes of the State Bar Association in mind.

Your Committee therefore recommends that the State Bar Association encourage group action of lawyers and particularly group action where the lawyers of more than one county are brought together to the end that the bar as a whole will see fit to belong to, and to join in the work of, the State Bar Association. Your Committee stands ready to assist those local units who wish to organize their activities. In view of the fact that each group will have its own peculiar problems your Committee feels it is useless at this time to attempt any effort at achieving uniformity either as to district or by-laws.

Report of Special Advisory Committee on Rules for Civil Proceedure in Federal Courts

Mr. Arthur Gilliom of Indianapolis, Chairman, read the report of the committee. The report follows:

Your Special Committee appointed by the President of the Association to consider the preliminary draft of rules of civil procedure for the District

Courts of the United States and the Supreme Court of the District of Columbia, prepared by the Advisory Committee appointed by the Supreme Court of the United States, makes the following report:

When your Committee was appointed it was informed by the President of the Association that the Advisory Committee appointed by the Supreme Court desired to receive the comments of special committees of state bar associations on the preliminary draft of rules by September of last year. With this in mind, the Association members who attended the summer session were invited by the Chairman of your Committee to transmit to your Committee their views on the suggested rules set out in the preliminary draft, and a statement of this invitation appeared in the issue of the Association's journal following that meeting.

Unfortunately, your Committee did not hear from any of the members of the Association on this subject, and it became necessary for the Committee to formulate and transmit its comments to the Advisory Committee without the benefit of the views of Association members.

Under date of September 17, 1936, your Committee transmitted its written comments to the Advisory Committee at Washington as follows:

I might add that after this report was sent to the Advisory Committee, we received a copy from one of the members of this Association of some comments that he had made, addressed directly to the Advisory Committee. It was not a communication to us; it was simply a copy that came to us of what came to the Advisory Committee after our report had been made.

"September 17, 1936.

"Advisory Committee on Rules for Civil Procedure,
Office of the Secretary,
Supreme Court of the United States Bldg.,
Washington, D. C.

Gentlemen:

"The undersigned Special Committee of the Indiana State Bar Association, appointed for the purpose of examining your preliminary draft of rules, desires briefly to express its views on some of the suggested rules."

(I might add there were a great many of these rules and this Committee confined itself to suggesting which of alternative rules that were set out in the draft would be preferable from our standpoint and in addition to that we made one or two suggestions.)

"First: With respect to the alternative rules set forth under Rule 3 and Rule 6, (dealing with the issuing of process and the filing of papers).

"We prefer and recommend the adoption of the Second Alternative Rule under Rule 3, and of the Second Suggested Rule under Rule 6. Among our reasons for this preference and recommendation are our observation that the practice under present Equity Rule 12 appears satisfactory to most attorneys in this State; that litigation is and should be a public matter and its pleading and papers should be available to the public, whether the litigation is instituted by the Government or by citizens; that ill-advised or vicious litigation is better deterred by the imposition of costs including expenses of the prevailing party, rather than by secrecy or privacy in the filing of papers; and that the time of lawyers and the expense to clients, is concerved more

by filing pleadings and papers in court, than by a system that would require a corps of notice servers and record clerks."

(Now those Rules 3 and 6, dealing with the subject of commencing actions, issuing process, filing of papers, provide various ways for commencing actions, and various conditions under which process issues and various conditions under which pleadings and papers would be filed.

There are three different plans set out in those alternative rules, and one plan is to simply commence an action by serving a complaint upon the adverse party without filing anything in the court. That reference perhaps is necessary to make clear some of the reasons we give here for the method that is now followed under equity Rule 12. There, as you know, you file your bill of complaints, and under rule of court, clerk issues a subpoena and then within twenty days after service you must file your answer. We thought that the method of instituting suits, filing papers, matters of process, as provided by Rule 12 is eminently satisfactory and should be followed as to both actions in law and in equity, so we stated our preference for those of the suggested rules which would provide that.)

"Second: With respect to Rule 45. (That deals with matters of jury trials.) Our preference is against the alternative rule, because of ease of computation."

(The rule that we prefer provides that a party claiming the right of trial by jury in a case may within twenty days after the last pleading is filed with the case serve a claim to that effect upon the other parties, and that establishes the right to have the case tried by jury, if it is a jury case. The alternative rule that we declared against here, had a more complicated way of determining the time within which that claim should be made, and we thought the first rule was preferable because it was easier to compute the time within which it must be done.)

"Third: With respect to Rule 47. Our preference is against the alternative rule, in view of the simplicity of the first form of the rule."

(That relates to how to get on the calendar first form of the rule. Now, the first form of the rule that we prefer provides that the cases should be put on the trial calendar under rule of the court, either when the pleadings are completed or after claim is filed for putting the case on the trial calendar by the parties to the other. The alternative rule had a more complicated way than the one I stated, and we thought it would be simpler to follow the first rule.)

"Fourth: With respect to Rule 48. Our preference is in favor of the alternative rule, in view of its simplicity."

(The first rule that was stated regarding dismissal of actions, in our opinion, wasn't as simple, and workable as the alternative; for that reason we preferred the alternative, which enumerates the specific grounds and occasions under which the case may be dismissed, while the other is upon stipulations of motions, etc.)

"Fifth: With respect to Rule 53. We believe the provision in lines 5-7 of Rule 53 to the effect that the court may refuse to permit the attorneys of the parties to examine jurors directly is unwise. Generally the attorneys are informed better than the court can be of the various angles to a case in reference to which it is proper to question a prospective juror, and the ultimate object of seating impartial triers would, we think, be better and

more expeditiously attained by permitting attorneys to question jurors directly under supervision of the court."

(That Rule 53, we would infer as it does, undertakes to empower the judge the right of attorneys to ask questions of jurors while being examined as prospective jurors.)

"Sixth: With respect to Rule 56. Our preference is against the alternative rule."

(The rule which we favor, which is the first rule, provides that if a motion is made at the close of the opposite parties' evidence for directed verdict, that the right to proceed to introduce evidence there, if the motion is denied, shall not be waived and it also provides this: that if at the close of the evidence, there is a motion made for directed verdict, and if that motion is at that stage denied that it shall be deemed that the court has reserved, however, its final decision upon that motion, so that if a verdict is returned contrary to the objections of the motion, that the court may still consider the motion for directed verdict, and that it may dispose of the case as though a verdict had been returned in accordance with the motion, if it then thinks it should be sustained.

Also this rule provides that if all parties join in motion for directed verdict, it shall not make a court case out of the case, if it is a jury case.

The alternative rule is like that I have outlined here except that it provides if a motion is made at the close of the evidence for directed verdict that it shall not be deemed that the court has reserved the final ruling upon that motion in a jury case without the consent of the jury. We favored the rule that does reserve without consulting the jury.)

"Seventh: With respect to Rule 63. We suggest consideration of an addition to clause (d) empowering trial court and reviewing courts in instances of groundless, vexatious or malicious litigation to order the losing party to pay, in addition to costs, a sum to the prevailing party not exceeding the reasonable expenses incurred by such party arising in or out of the litigation, including reasonable attorney's fees, when such payment is deemed necessary by such court to prevent injustice. We think a provision to this effect, if the power exists to include it, would come nearer to deterring improper and unnecessary litigation than perhaps any other single provision."

(That rule deals with the form of judgment and with the matter of costs and we felt that clause d, which now as written only provides that unless the statute provides otherwise, the costs shall be assessed within the discretion of the courts. We felt that added to that there might be well added some provision that would impose costs and expenses upon the losing party in litigation which is groundless and vexatious.)

"Eighth. With respect to Rule 74. We favor alternative Rule 74 over the rule first stated."

(Now, the first rule provides that there shall be a full transcript of the testimony prepared in question and answer form, in cases where an assignment of errors is based in any sense upon testimony, and that this typewritten transcript of the testimony in question and answer form, as distinguished from a narrative form, as you now use in the criminal courts shall then be a part of the record, and that the entire record, including this entire transcript of testimony in question and answer form shall then be printed for the use of the Appellate Court.

The alternative rule which we favor differs in this respect, that you do not need under it to print the record, but instead it provides that the clerk should provide three complete typewritten copies of the entire record for use in the higher court.

Now, as between those two we favored the alternative because the printing of a large record, with the testimony in question and answer form, is a very expensive thing.

We criticize, however, the alternative rule in this respect:

"We deem it too expensive to litigants to require printing of the evidence in question and answer form as would have to be done under Rule 74, and the judge to whom the case is assigned may read questions and answers into the typewritten record quite as well as in a printed copy. We also deem it unwise to provide that the judge may eliminate any portion of the proposed record which he may deem unnecessary to a review of the case, as is done in lines 50-56 of paragraph (d) of Rule 74. The litigant who appeals and advances the expense of preparing and printing a record should be permitted to include therein whatever his attorney's judgment suggests should be included. It is better to err on the side of full information to the reviewing court rather than on the side of insufficient information. This provision is also subject to harmful abuse in case of a District judge who might be overzealous in his desire to be affirmed on appeal.

"As against either Rule 74, or Alternative Rule 74, we prefer, however, the practice of reducing the evidence to narrative form and of printing the record, as is now the practice in the Federal Courts. This practice has the distinct merit of acquainting the attorneys accurately with the evidence and of presenting it to the reviewing court in accurate and quickly accessible form, and it renders unnecessary the prolixity in briefs which a rule like Alternative Rule 74 occasions. We regard it much preferable to reduce the evidence to narrative form and to print the record, than to have a prolix typewritten record and a brief made prolix by inclusion of a narrative statement of evidence."

(One criticism that I have always felt over our state practices is that you are obliged in the document that is to be denominated as a brief to set out so much of the record in narrative statement of the record and other matters, so that when you come to a brief which should be confined to matters of law and their application, you really have a combination of a printed record and a brief under what we call brief. Under federal practice now the record is printed always, and the testimony is reduced to narrative form. The printed record becomes one document, and then the brief that is required is simply a short, usually it should be, a short statement of what the case is about and what the issues are, and the contested issues, and then what the proposition is and points are that one relies on, and personally, and other members of the Committee felt that they prefer to keep the federal practice that way.)

A letter of acknowledgment dated September 19, 1936, was received by your committee from the Secretary of the Advisory Committee expressing appreciation for the suggestions contained in our comments and advising that these would be brought to the attention of the Advisory Committee. We have received no further communications from the Advisory Committee.

It is our view that your Committee has served its purpose and that it should now be discharged.

The report of the committee was approved and the committee continued with instructions to consider any new drafts of the rules which may be submitted to the bar for consideration before final adoption by the court.

Report of Committee on Jurisprudence and Law Reform

Hon. Alphonso C. Wood, Judge of the Appellate Court of Indiana presented the following report to the committee:

Your Committee on Jurisprudence and Law Reform begs leave to submit the following report:

The committee has felt that its first duty was to determine its proper sphere of activity and has devoted some consideration to this question with the result that your Committee has concluded.

First, that in view of the creation of the Judicial Council, a body designed and authorized by law to consider matters of practice and procedure, the Committee should not undertake consideration of questions of adjective law. This conclusion is in a line with the precedent established by a recommendation, of a similar nature, made by the former committee and approved by the association at its meeting last July.

Second, that in the field of substantive law, the Committee can be of greatest service by continuing consideration of the subject of uniform laws. The Committee has selected uniform laws on three important subjects and is undertaking a study of them with a view to making a recommendation to the association as to the wisdom of sponsoring such laws for adoption in Indiana. For the more effective consideration of the matter, the Committee has been divided into three subcommittees, each subcommittee taking up a separate law.

The Committee expects to have a further report for the summer meeting of the association.

Address by Clarence E. Manion

The afternoon session of the meeting was concluded by an address upon the subject "Reviewing Judicial Review" by Professor Clarence E. Manion of Notre Dame University School of Law. (The address of Mr. Manion is printed in full as a leading article in this issue of the Journal.)

Young Lawyer's Smoker

Following the general afternoon session the young Lawyers' Group held a smoker which was well attended. One of the delightful features of the mid-winter meeting this year was the large and enthusiastic group of young lawyers who were in attendance.

Annual Dinner

The annual dinner of the mid-winter meeting was held at the Riley Room of the Claypool Hotel at six-thirty, President Cole presiding. A number of wives and friends of members were in attendance. The address "Was Coke Right?" was delivered by the Hon. Murray Seasongood of the Cincinnati Bar. (Mr. Seasongood's address will be printed in full in an early issue of the Journal.)