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BENCH AND BAR

REPORT OF PROGRAM COMMITTEE RELATIVE TO MATTERS PENDING BEFORE THE WEST VIRGINIA BAR ASSOCIATION*

Since the last meeting of the West Virginia Bar Association (Parkersburg, September 20 and 21, 1934) the legislature of West Virginia has put into effect some of the long-sought reforms sponsored by the Association. Notable among these are the revision of the divorce law, carried on the program of the Association for some years and made specific in last year's report of the Committee on Judicial Administration and Legal Reform, and the new law concerning service of process on non-residents in highway collision cases, discussed at length by Mr. George Richardson at the Parkersburg meeting (22-31). In addition to these, a bill sponsored by the Judicial Council and conferring rule-making power generally on the Supreme Court in all matters of pleading, practice and procedure, allowing present statutes to remain in force only as rules of court until modified, takes a most decided step toward simplification of our problems and, it is hoped, their ultimate solution. The result of this last-mentioned bill is that several matters formerly listed as legislative now become judicial.

The Parkersburg meeting was marked by pronounced effort toward the actual putting into effect of plans which had been in the formative period too long. It is to be regretted that the effort was not entirely successful, though it has been so much more successful than usual that there is great reason for congratulation to the Association and its officers, both of 1934 and 1935. The long-deferred action on doing away with the diploma privilege in West Virginia University was embodied in a bill enacted by the legislature; unfortunately, this act failed to except the present students of the University from its operation and, after much discussion, was vetoed by the Governor. A bill designed to carry into effect certain suggestions of President Lon H. Kelly in regard to improving the jury system failed to pass the legislature. The same was true of the bill in regard to chancery hearings in open court. Effort on this last bill was abandoned by the representatives of the Association at Charleston after the Judicial Council's bill in regard to the rule-making power of the Supreme Court had passed, as this then definitely became a matter for the Supreme Court's

* References, unless otherwise noted, are to the Year Book of 1934.
consideration rather than that of the legislature. It may be added that the circumstances connected with the failure to pass the bill in regard to reform of the jury system were not such as to give room for discouragement in regard to future activity along the same line.

Your committee would respectfully urge that all local bar associations give special thought to the new act vesting the rule-making power in the Supreme Court and also to the study of bar integration, as hereinafter suggested. In neither of these suggestions is your committee making any recommendation. It may be safely taken for granted that there is no desire for a drastic reform of our pleading, practice and procedure. The vesting of this power in the Supreme Court instead of in the legislature is a measure designed to protect that procedure from drastic revision as well as to make its revision simpler when there is actual need for change. In regard to bar integration, the only recommendation the committee makes is a thorough and unprejudiced study of the problem, so that intelligent action may be taken at the meeting now scheduled for White Sulphur Springs.

Of course, it is further hoped that the local bar associations will give some consideration to each of the matters here listed.

I. MATTERS OF GENERAL PUBLIC INTEREST

(1) Constitutional

The matter of judicial reform by revision of Article VIII of the Constitution, now coupled with the project of devising ways and means to relieve the Supreme Court from the excessive burden under which it now labors, still remains a problem for the Association. A resolution drafted by the Special Committee on Appellate Procedure was defeated at the last legislative session. Whether that amendment is the proper one or not may be debatable; that there is need for action on this as well as on the whole matter of reform of our judicial system is hardly open to question. Mention of these questions may be found on pages 80 and 82, and the elaborate discussion of the Supreme Court problem will be found in the papers of Judge Kenna and Mr. Coleman and the following discussions at pages 122-35, 139-64.

(2) Legislative

1. Proposed changes in law of death by wrongful act. Special recommendation in report of Special Committee on Program,
Year Book 1933, page 224. No reference. See paper of Mr. Russell S. Ritz, Year Book 1931.


3. The correction of the manifest errors, suggested errors, ambiguities or deficiencies listed in the report of the Special Committee on Code Correction, pages 164-81. Your committee is not advised as to what, if any, progress with these was made at the last session of the legislature.

4. The study, for the purpose of comparison, recommendation or disapproval, of the Bank Collection Code (W. Va. Rev. Code, c. 31, art. 4A) and the Uniform Bank Collection Act of the National Conference of Commissioners on Uniform State Laws. Your committee recommends that some action be taken on this or that it be dropped from the program.

5. Registration of attorneys, limitation of number of bar examinations to be taken by applicant and limitation of the "diploma privilege" in practice. See Year Book 1933, pages 119, 139. Whether or not anything further along this line will be attempted is for the determination of the Association.

6. Proposed changes in the jury laws:
   a. Requiring jurors to be freeholders, residents of county for one year and between the ages of twenty-five and seventy, as well as imposing educational qualifications.
   b. Repealing or amending the law which forbids service on a jury oftener than once in two years.
   c. Shortening the exemption list and repealing the statute of disqualification by request.

See page 59 and, for discussion, pages 44 to 75. (The other recommendations of President Kelly now belong under the judicial head).

In addition to these, under the new head of Criminal Law and Procedure, will be found further legislative matters.

(3) Judicial

1. Instructions to juries. Page 108, and also under the jury recommendations in President Kelly's paper and the subsequent discussion, 44-75. Still a matter for definite recommendation and now within the power of the Supreme Court. See also Year Book 1933, pages 135, 136, 224, 226.

3. Declaratory judgments. Still carried as active item but without recommendation. Presumably in hands of Committee on Judicial Administration and Legal Reform.

4. Dispensing with bills of exceptions. The Association did not go on record as referring this to the Judicial Council, although such action was recommended by the Committee on Judicial Administration and Legal Reform, Year Book 1933, page 134.


6. Amending jury regulations:
   a. By making failure to appear for service without a just excuse contempt of court, and by making it like contempt for any person other than a called juror to request the judge to excuse any person summoned as a juror except upon showing that the juror himself cannot appear in person.
   b. By adopting a uniform rule for selecting the panel fairly by lot.

(4) Criminal Law and Procedure

The present recommendations under this head must be, for the time being, grouped separately rather than divided into legislative and judicial matters. The report connected with these matters will be found on pages 195 and 205.

1. (a) The establishment of a permanent State Committee on Criminal Justice. In hands of Committee on Criminal Law.
   (b) The establishment of state association committees and local bar association committees (1) on the reform of criminal procedure and (2) on police and prosecution.
   Referred to the Committee on Criminal Law.

2. The creation of a State Department of Justice. Referred to Committee on Criminal Law.

3. The matter of ridding the profession of dishonest and unethical practitioners. Referred to Committee on Professional Ethics.
4. Action on the recommendation of the American Bar Association to every state association that it formulate improvements in criminal law and procedure, with the following specific recommendations in mind:

(a) Basing the procedure on the American Law Institute Code, and especially on the following provisions:

One — Permitting the accused to elect whether he shall be tried by jury or court except in capital cases.

Two — Permitting alternate or extra jurors to serve in case of disability or disqualification of any juror.

Three — Permitting trial upon information as well as indictment, allowing waiver of indictment where there is a constitutional requirement of the same.

Four — Providing for jury verdicts by less than a unanimous vote except in the case of certain major felonies.

(b) Requiring advance notice of claim of alibi or insanity.

(c) Permitting comment by court and counsel on the failure of a defendant to testify in his own behalf.

All of these recommendations except 4 (a) Three were referred to the legislative committee for action. Your committee is not advised as to whether or not any step was taken to carry these recommendations into effect. 4 (a) Three was referred to the new Committee on Criminal Law for further study and action.

5. (a) Requiring the assignment of grounds of demurrer in criminal cases as in civil.

(b) Giving state and defendant an equal number of peremptory challenges in felony cases.

Both referred to legislative committee.

6. Allowing state to appeal from an acquittal. Referred to new Committee on Criminal Law.

II. ASSOCIATION MATTERS OF GENERAL INTEREST

1. Bar integration. Pages 109-10. This very important question for the report of the Committee on Judicial Administration and Legal Reform and for action at the next meeting will be found elaborately discussed in Year Book 1932, pages 116-160. It is earnestly requested that all members give this special attention and further inform themselves as far as possible from other sources on this important question.

2. The matter of salaries of the faculty of the College of Law. Pages 79-81. The Association is still on record in favor of adequate salaries but, at present, without a definite recommendation as to procedure. For the matter of increased appropriation
for the library of the College of Law see Year Book 1932, pages 90-91.

3. The proposed rule of the code of ethics requiring an attorney to keep his clients' money in a bank account separate from his own. No action since 1931. Then referred to Committee on Judicial Administration and Legal Reform.

   (a) Conflict of Laws. Pages 36-37.
   (b) Contracts. Pages 102-103.
   (c) Agency. Pages 101-102.

   Each of these is in the hands of a special committee with the cooperation of a member of the faculty of the College of Law.

5. Coordination of the work of bar associations, local, state and national. In hands of special committee. Pages 236-238. See also suggestions as to visits by vice presidents, pages 15, 20-21. Referred to Executive Council. As to suggested efforts of Association to encourage formation of district associations in districts composed of small counties, see Year Book 1933, pages 23, 24.

6. Cooperation with the Institute of Legal History of West Virginia University and aid to the staff agents of the Institute in the collection and preservation of the materials of legal history of this State. In hands of special committee. Pages 240, 246.

III. MATTERS CONCERNING THE ASSOCIATION ONLY

1. The semi-centennial meeting to be held in Wheeling in 1936. Plans in hands of Executive Council.


While this committee has no authority to drop any item once appearing on the program, it has taken the liberty of omitting (2) a and b from the judicial section of last year. A number of these other items should be definitely referred to the Judicial Council and still others either reported for action or definitely dropped.

Respectfully submitted,

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