

PLAN TO ESTABLISH AMERICAN LAW INSTITUTE

Representative Gathering of Profession Called at Washington on Feb. 23 by Committee on Establishment of a Permanent Organization for Improvement of the Law Will Have Well Digested Plan Before It for Starting Movement of Tremendous National Importance

By WILLIAM DRAPER LEWIS

THE meeting in Washington on February 23rd, which has been called by the Committee on the establishment of a Permanent Organization for the Improvement of the Law, will both from the point of view of personnel and object be the most important professional meeting as yet held in this country.

No pains have been spared by the Committee to make the gathering representative in the best sense of the legal profession. Invitations have been sent to the Chief Justice of the United States and the Associate Justices of the Supreme Court, the senior Federal Judge of each of the Federal Circuit Courts of Appeals, the Attorney General and the Solicitor General of the United States, the Chief Justice of the highest court of each State, the president and ex-presidents of The American Bar Association and the members of the executive committee and general council, the president of each state bar association, the dean of each school belonging to the Association of American Law Schools, the president of the learned legal societies, as the American Institute of Criminal Law and Criminology, the American Society of International Law and the American Judicature Society, the chairman or senior member of the Commissioners on Uniform State Laws in each State, the president of the National Conference of Commissioners on Uniform State Laws, and between one and two hundred other persons selected because of their knowledge and high professional standing and their known interest in constructive work for the improvement of the law.

For many years the feeling has been growing among the more thoughtful members of the legal profession that our law is unnecessarily uncertain and complex and that its rules do not always efficiently carry out the ends which the preponderating thought of the community regard as desirable. With a recognition of these defects has come the belief that it is the duty of the legal profession as a whole, and more especially of its leaders, to promote the clarification, simplification and better adaptation to existing needs of the substantive and procedural law.

The origin of the present movement was an invitation issued to about twenty persons by the Association of American Law Schools through its Committee on the Establishment of a Juristic Center. Those accepting the invitation formed on May 10th last a Committee on the Establishment of a Permanent Organization for the Improvement of the Law.

The first work of the Committee was to investigate the principal defects in our law and their chief causes, as well as to ascertain what may be done by the legal profession to remedy or modify these defects. The result of this investigation, which has been greatly facilitated by the Carnegie Corpora-

tion's donation of \$25,000, is embodied in a Report, a volume of some one hundred pages. Copies have been mailed to all those who will attend the Washington meeting, and the meeting itself will be devoted to a discussion of the Report and its recommendations.

The Report recommends the organization by those who attend the Washington meeting of an American Law Institute. The suggested constitution is exceedingly simple. The Committee believe that the Washington meeting should elect twenty-one persons members of the first Council, that these should by lot divide themselves into three classes to serve for three, seven and nine years respectively. If the recommendations of the Committee are accepted the Council will have full power of management, except that before any legal work done under the direction of the Institute shall be published as an official publication of the Institute, it shall be submitted to a meeting of members or to the members for their several criticisms or expressions of opinion, or both.

The vital portion of the Report is that which relates to the work which it is proposed that the Institute shall carry on. This work is called in the Report a Restatement of the Law. The shortest way to give some idea of the nature of the Restatement proposed is to indicate its form as suggested by the Committee. They suggest that the law of a topic shall be reduced to principles which shall be stated with the care and precision of a well-drawn statute, though it will not be necessary, and may often not be advisable, to adopt language appropriate for statutory enactment. It is further suggested that a second part of the Restatement, separately published or separated from the statement of principles by typographical or other device, shall consist of a discussion of the present condition of the law and the reasons for the adoption of the principles as stated.

The Committee believe that where the law is uncertain because of conflict in the legal theories expressed in the opinions of the courts, the Restatement should express the principle which those responsible for its production regard as sound, and that, furthermore, where the present law though certain is not well adapted to promote the ends generally regarded as desirable, the rules or principles given in the Restatement may express a change in the law, though care should be taken to avoid proposing changes of a political or social character which would promote controversy.

The Committee is opposed to the idea that the principles set forth in the Restatement shall be adopted as a code. On the other hand, they recognize that it is essential that the Restatement shall have an authority approximately analogous to that

accorded the decisions of the highest courts, and that to give reasonable assurance of this the Restatement must be supremely well done by an organization representative not of a group but of the best in the legal profession in all parts of the United States. The members of the Committee calling the Washington meeting are Elihu Root, Chairman; George W. Wickersham, Vice-Chairman; Henry M. Bates, Joseph H. Beale, George G. Bogert, Charles A. Boston, Charles C. Burlingham, James Byrne, Benjamin N. Cardozo, Joseph P. Chamberlain, Arthur L. Corbin, Frederic R. Coudert, John W. Davis, Ernst Freund, Frederick Green, William D. Guthrie, Herbert S. Hadley, James P. Hall, Learned Hand, Herbert Harley, Alexander C. King, R. C. Leffingwell, Edward J. McGuire, Julian W. Mack, William E. Mikell, John G. Milburn, Victor Morawetz, Edmund M. Morgan, George Welwood Murray, John E. O'Brien, Thomas I. Parkinson, Cuthbert W. Pound, Roscoe Pound, James B. Reynolds, Harlan F. Stone, Charles Strauss, Henry W. Taft, John H. Wigmore, Samuel Williston, and the present writer. I shall be glad to send to any member of the American Bar Association on application a copy of the Report referred to. Address: 3400 Chestnut St., Philadelphia, Pa.

Acceptances to invitations indicate that the Supreme Court of the U. S. and at least a majority of the State Supreme Courts will be represented, and that a majority of the other officials invited will attend. A dinner at the New Willard Feb. 23 will conclude the meeting. Members of the American Bar Association and State Bar Associations may subscribe for themselves and members of their families. Address Col. George T. Weitzel, Mills Building, Washington, D. C.

Analysis of the Report

The report starts with the assertion that there is today general dissatisfaction with the administration of justice. It admits that there exists just cause for complaint. "Rightly, we are proud of our legal system considered as a whole," say the members of the Committee, "but, as lawyers we also know that parts of our law are uncertain and unnecessarily complex; that there are rules of law that are not working well in practice, and that much of our legal procedure and court organization needs revision."

In speaking of the general character of the work of any organization established by lawyers for the improvement of the law, the Committee point out that the fact that a man is a lawyer does not make him an expert on the tariff, or on the proper organization of Municipal Governments, or enable him to speak with authority on hundreds of other questions of existing or proposed law debated on public platforms and in legislative assemblies. The Report declares that: "It is the province of the people and of legislative bodies, through constitutions and statutes to express the political, economic and social policies of the nation, of its states and of smaller communities. It is the province of lawyers to suggest, construct and criticise the instruments by which these policies are effectuated. The American Law Institute, which the Committee seek to promote, will therefore concern itself with such matters as the form in which public law should be expressed, the details of private law procedure, the administration of law and judicial organization. It

should not promote or obstruct political, social or economic changes."

The Committee state, however, that even as thus restricted the proposed organization is sufficiently wide in its scope to require those who advise its establishment to state at least one specific work of importance which the organization should undertake on its foundation. This the Committee undertakes to do by pointing out what they regard as the two chief defects in American law,—its uncertainty and its complexity. "These defects," the report states, "cause useless litigation, prevent resort to the courts to enforce just rights, make it impossible to advise persons of their rights, and when litigation is begun, create delay and expense."

The Committee, however, believe that the most serious consequence of these defects is that they create a lack of respect for law, which undermines the moral fibre of the community, and becomes a cause of anti-social conduct. As a result, the rich are more apt to use their wealth to oppress, the business man is more apt to cheat, and those in immediate want are more apt to steal. "In our opinion," say the Committee, "the most important task that the bar can undertake is to reduce the amount of uncertainty and complexity of the law."

As a first step towards the fulfillment of this task, the Committee has printed as a second part of their report the result of an exhaustive examination into the existing causes of complexity and uncertainty.

The report thus summarizes the result: "Our investigation shows that among the causes of the law's uncertainty are lack of agreement among the members of the legal profession upon the fundamental principles of the common law, lack of precision in the use of legal terms, conflicting and badly drawn statutory provisions, attempts to distinguish between two cases where the facts present no distinction, the great volume of recorded decisions, the ignorance of judges and lawyers and the number and nature of novel legal cases."

The report points out that some of these causes, as the number and nature of novel legal cases, are beyond the power of any association of lawyers to remedy. On the other hand, the Committee state that many of the causes of uncertainty are within the control of the legal profession, this being especially true of that cause which the Committee believes is chief among all the causes of the uncertainty in the present law, namely, the lack of agreement among lawyers concerning the fundamental principles of the common law. Closely interwoven with this chief cause is another cause, also largely within the power of the legal profession to remedy—lack of precision in the use of legal terms.

The remedy advocated in the report is the production of what the Committee terms "a restatement of the law that will have an authority much greater than that now accorded to any legal work."

The Committee point out that the object of this restatement should not only be to help make certain much that is now uncertain, and to simplify unnecessary complexity, but also to promote those changes which will tend better to adapt the law to the needs of life. "The character of the restatement which we have in mind," say the Committee, "can best be described by saying that it should be at once analytical, critical and constructive."

Concerning the changes in the law which may properly be suggested in the restatement, the re-

port points out that changes which are or would become, if proposed, a matter of general public concern and discussion, should not be considered. Changes which do not fall under the ban of this limitation, and which will carry out more efficiently ends generally accepted as desirable, are within the province of the restatement to suggest.

In illustrating this line between changes which it will be permissible for the restatement to suggest and those which are beyond its province, the Committee refer to the system of employees' compensation for industrial accidents. The original suggestion of such a fundamental change presented a social and economic question, and therefore would have been beyond the province of the proposed restatement to suggest; but the system, now being generally accepted, modifications in the substantive law or in the proceedings relating thereto will be no more beyond the province of the restatement than would be proposals affecting the law of real property, or the admissibility of evidence in an action for damages due to an alleged trespass.

The report lays considerable stress on the form of the restatement. The Committee believe that the chief characteristic of the form of presentation should be the separation, by typographical or other device, of the statement of the principles of law from the analysis of the legal problems involved, and the statement of the present condition of the law. They believe that the statement of principles should be made with the care and precision of a well-drawn statute, and that the statement should be much more complete than that found in the codes of continental Europe. The Committee, however, feel strongly that the statement of principles should not be adopted by legislatures as a code. They point out that one feature of the Common law is its flexibility, and that another is the greater fullness with which it is possible, by an examination of the decisions of the courts, to express the law. Both of these features the Committee regard as of inestimable value, and one or the other would be lost by codification.

The Committee admit that to fulfill its objects, the restatement must have authority on a par with that now accorded to the decisions of the courts. To produce this result, they state that the work must not only be supremely well done, but that the organization undertaking it must be such as to command from the start the interest and respect of the legal profession and the public. The report, therefore devotes considerable space to the constitution of the organization. It recommends that the distinguished Judges, lawyers and members of law faculties assembling in Washington on February 23rd next, there organize the American Law Institute, become its first members and elect a council of 21 to manage its affairs and to superintend the preparation of the restatement.

In speaking of the time and cost of carrying on the restatement the report states that to regard the proposed restatement as a sort of improved legal encyclopedia which will be produced in the space of a few years and cover the entire field of law is totally to misconceive its character, and that long before it will be possible to complete a restatement of all the principal topics of the law, the topics first completed may need in one direction expansion, in another modification, in another perhaps positive change. "There will never," say the Committee,

"be a time when the work is done and its results labelled 'A Complete Restatement of the Law.' The work of restating the law is rather like that of adapting a building to the ever-changing needs of those who dwell therein. Such a task by the very definition of its object is continuous."

Neither does the report attempt to forecast the time it will take to complete the three subjects—Conflict of Laws, Torts and Corporations—which it recommends should be the first taken up for restatement; but it does state that some definite result may be expected in two years from the appointment of the first committee of experts; and that five years will be sufficient to demonstrate the permanent value of the work.

The annual cost of carrying on the work of making a restatement in three topics is estimated at approximately \$100,000 a year.

Standard Zoning Enabling Act

A Standard State Zoning Enabling Act, prepared by the Advisory Committee on Zoning, appointed by Secretary Hoover, has recently been issued by the Department of Commerce. It should be of great service to municipalities, which contemplate adopting zoning regulations. The importance of the subject with which it deals is indicated by a recent statement, issued by the Department of Commerce, that more than fifteen million people, or about 27 per cent of the total urban population of the country, already live in zoned cities, towns and villages; and there can be no doubt that the zoned area of the country is steadily increasing. Explanatory notes prefixed to the standard act, state that no definitions are included, as the terms used in the act are so commonly understood that definitions are unnecessary. Those proposing to employ this draft are also cautioned to modify it as little as possible, as it has been prepared with a full knowledge of the decisions of the courts in every case in which zoning acts have been under review. In brief, a safe course to follow is to make only those changes necessary to have the act conform to local legislative customs and modes of expression. Especial caution is given to beware of additional words and phrases, which, as a rule restrict the meaning from the legal point of view. Under the heading, "Don't try to consolidate sections," a note states that "It is natural to try to shorten the act by consolidating sections. This may defeat one of the purposes of the act, namely, of keeping the language of the statute as simple and concise as possible. It is much better to have an act broken up into a number of sections, provided they are properly drawn, than to have one or two, or a few long, involved sections. While it is recognized that some of the sections in the standard act could be combined, it is put purposely in its present form."

Bar Admissions in Ohio

"There were 212 applicants for admission to the Bar at the recent examinations in Columbus, 154 of whom passed and 54 failed. The highest grade was attained by Ralph Wickham Jones, of Cleveland, a graduate of the Harvard Law School, who was given a rating of 92.75. The second highest was Albert L. Caris of Ravenna (classed as probate judge), who was given 87.6."—*Ohio Law Bulletin and Reporter*, Jan. 1, 1923.