Enclosure C in No. 15.

WHAT SHALL THE "RECORD" BE? (By E. D. YORK, Washington, D.C.)

AT the meeting of the American Bar Association held at Saratoga, New York, in August, 1885, much of the time was spent upon the report of a committee which had been appointed to consider "whether the present delay and uncertainty in judicial administration can be lessened, and, if so, by what means?"

In the first aspect of this report—the delay in judicial administration—law stenographers have a practical interest, which is my excuse for this reference thereto. The full report is well worth the attention of every law reporter, having been prepared by the eminent counsel, David Dudley Field and John F. Dillon. They sum up the results of their investigations in a table of fourteen conclusions by which the desired end may be attained, of which the sixth is as follows: "VI. The record of a trial should contain shorthand notes of all oral testimony, written out in longhand and filed with the clerk; but only such parts should be copied and sent to an Appellate Court as are relevant to the point to be discussed on the appeal, and, if more be sent, the party sending it should be made to pay into Court a sum fixed by the Appellate Court, by way of penalty." This was amended by the association so as to read as follows: "VI. The record of a trial, in every Court in which official stenographers are in attendance, should contain shorthand notes of all oral testimonys, which notes, if the Court shall so order, shall be written out in longhand, and filed with the clerk; but only," &c. The rest as above.

This recommendation is important, not so much for what it contains, as indicative of the tendency of thought among the best legal minds of the country. And these amendments are illustrative, too, of some ideas which are taking root and may soon bear fruit. It would seem that, as originally prepared, it was presumed that all oral testimony in Courts of justice would be stenographically reported. It doubtless had not occurred to the learned New York attorneys who fashioned this article that there were still some benighted regions, not a thousand miles from Chicago, upon which the benign smile of an "official stenographer" had never rested. It was no doubt some legal luminary of such outer darkness who suggested the amendment, in order to make the recommendation more precisely conformable to the practice with which he was familiar. Any person with a talent for drawing inferences can draw as many as he likes as to what is meant by the first amendment, but it would seem to a disinterested observer that the article had been weakened rather than improved thereby. Certainly it could not be supposed that the report of a private stenographer could be made a part of the record. The first statement is at least more concise. It contemplates the taking of all oral testimony by means of shorthand, and that from the notes so taken the record shall be in part made up. This record is the full history of the proceedings had in any legal proceeding, and, when complete, it should contain, not the shorthand notes themselves, but the transcription of those notes in longhand. If no further proceedings are had after the first trial or hearing—that is to say, if judgment is given and execution issues, or the matter in controversy is finally and definitely settled or concluded—then no record will be required; and there will be, in the sense in which the term seems to be here used—that of a prepared history or word-photograph of the legal proceeding—no record beyond such as may appear on the dockets of the Clerk of the Court. This is true of a considerable proportion of the cases tried in our State Courts, and it would seem as if the clause "if the Court should so order" was inserted to let the Court, instead of the stenographer—who would be an interested party to the extent of his pay for the transcription—decide whether the notes should be written out in longhand. From my experience during six years' steady reporting as an official in the Trial Courts of Eastern Pennsylvania I would estimate that about one-quarter to one-third of the cases reported in the ordinary run of business need not be transcribed.

The next recommendation is one of serious interest, and is becoming, in some States, a vital question. Many Judges of Appellate Courts are appalled at the enormous quantity of matter presented to them in cases for review. The testimony taken by question and answer, with all the extraneous matter set forth at length by the conscientious (?) verbatim reporter, often swells the record to hundreds of pages, through which the weary Judge, burdened with a long vista of many such cases before him, is expected to patiently wade, and in which he often helplessly flounders in search of the few stray facts in the case. No one denies that a large part of the testimony taken in the lower Court is entirely useless for the purposes of an appeal. Therefore such facts and such only as bear directly upon the question upon which the appeal is based should be printed for the ultimate tribunal. Why should parties be burdened with the useless expense of copying and printing a great mass of redundant matter? Why should the appeal be clogged with it, and the Judges burdened with useless verbiage?

It has many times been made an argument against the introduction and use of shorthand in the Courts that it made the record so voluminous and expensive. This is a true indictment. And it has been an open question at times whether the advantages of the use of shorthand compensated for these drawbacks. The remedy would seem to lie in the suggestion of the Bar Association.

I am under the impression that this method has been to some extent adopted in one or more States; but I can give, at present, no definite data. It would be interesting if some one conversant with any practice of that kind would describe it in detail. It would seem that, if properly guarded and systematized, such a practice would confer a great benefit upon the litigants, the Judges, and, by no means least, upon the reporter. It would not deprive him of any lucrative folios in the lower Courts, would make the Appellate Judges once more his friends, and strengthen that foothold which the stenographic profession has already attained in the conduct of legal proceedings.