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THE PROGRESS OF THE LAW: JUDICIAL HOUSEKEEPING

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JUDICIAL HOUSEKEEPING

LIKE the weather, everybody talks about the law's delays. Unlike the weather, something is being done about it.

The *something,* is being done right now—by the bar, by the press and by citizens' groups. And high on the list of the "doers" are such organization as The Association of the Bar of the City of New York, the Temporary Commission on the Courts and the Committee for Modern Courts.

Bad Housekeeping—The Administration of the New York Courts is the title of the two-year study made by The Association of the Bar, which was released to the public early in February. The report denounces the "confused structure" of the courts, procedures which are "snail-like and confusing," and a general brand of performance which is so "woefully inadequate" that the courts "daily risk the loss of public respect and confidence." In transmitting an advance copy of the report to Harrison Tweed, Chairman of the Temporary Commission on the Courts, bar association president Allen T. Klots wrote an accompanying letter declaring that the New York judiciary had become "more and more involved in the haphazard patchwork which has evolved in the 109 years since our Supreme Court was first set up."

In mid-February, the Temporary Commission on the Courts issued its first major report. Created by the New York State Legislature (Chapter 591 of the Laws of 1953) "to make a comprehensive study of the judicial system of the State of New York," the Commission not only criticized the present state of judicial administration but made recommendations of long-range significance.

Several "immediate remedies" were suggested to cure the problem of calendar congestion and delay. One important recommendation would require preliminary pre-trial settlement conferences in all personal injury and death actions before any such cases could be added to the regular trial calendar. A second proposal is the enactment of a new section of the Civil Practice Act, 475-a, to provide for the creation of an attorney's lien by means of a claim letter upon the party against whom a claim is being asserted. Other recommendations deal with tort litigation involving the City of New York, transfer of cases to lower courts and workmen's compensation law provisions relating to third-party actions.

Of even greater interest are the proposals to modernize the structure of the New York court system and to revise and simplify the provisions governing New York civil procedure. Arguing that "many existing problems were either caused or aggravated by the complex and archaic

melange of courts and types of courts throughout the State," the Commission recommended that all courts of first instance be replaced by the smallest possible number of statewide trial courts. These courts would then be divided into civil, criminal, youth, children, family, probate and other special "parts." There would be no changes in the organization of the appellate courts.

As far as the field of civil procedure is concerned, the Commission took the position that any attempt at "piecemeal amendment" would be inadequate. Recommended was an over-all study and revision which could reduce the volume of procedural statutes and rules and make procedural matters uniform from court to court.

Other proposals were made relative to reducing the cost of litigation and appeals, increasing the number of justices now serving on the Supreme Court and various problems connected with "children, youth and the family in the courts."

Presiding Justice David W. Peck, speaking for the entire Appellate Division, First Department, discussed this subject last month at a meeting staged by the newly-formed citizens' group, the Committee for Modern Courts. He emphasized the fact that the existing judicial establishment is doing the best it can about delays, and that the only solution to present problems will be found in an all-out structural reorganization.

The newspapers have been loud in their applause for the findings and recommendations of The Association of the Bar, the Temporary Commission, the Committee for Modern Courts and Mr. Justice Peck. Editorials in the leading dailies have urged the Citizens' group to rally lay opinion behind court reform. The Committee for Modern Courts has prepared an attractive brochure on the subject and thousands of these pamphlets were mailed to "thought leaders" throughout the City last month. But this is not enough. The problem—and the program—for judicial streamlining and reorganization must become the personal concern of every member of the bar. The lawyers must lead the way.

CRIME AND CRIMINAL TRIALS

SENSATIONAL events in the world of crime and the criminal law have tended to obscure three significant and far-reaching determinations of the New York Courts in recent weeks, bearing upon the problems of criminal trials and procedures.

By far the most sensational of these events were the murder trial of Dr. Samuel Sheppard in Cleveland and the still unsolved murder of international financier Serge Rubinstein in New York. And, as this note is being written, the second trial of Minot F. Jelke on charges of compulsory prostitution is monopolizing

the headlines in the major dailies from coast to coast.

Dr. Sheppard was convicted on December 21, 1954 of the brutal slaying of his wife Marilyn last summer. Of particular interest to legal historians was the length of the jury deliberations prior to the "guilty" verdict. The jury was out a total of 102 hours—42 hours of which were spent in actual deliberation. This was a far longer period of time than that required by the juries in other famous American murder trials. The jury that heard the sensational trial of Harry K. Thaw, accused of murdering architect Stanford White, deliberated 25 hours before acquitting the defendant. And it required 20 hours in 1949 for a New York jury to acquit Benjamin Feldman, Brooklyn druggist, of poisoning his wife. Feldman had been convicted at two previous trials but had secured reversals.

Bruno Richard Hauptman was convicted of the kidnap-slaying of Charles A. Lindbergh, Jr., after 11 hours and six minutes of deliberations; police Lieutenant Charles Becker was convicted of the murder of Charles Rosenthal after nine hours and 37 minutes; and Ruth Snyder and Judd Gray were found guilty after deliberations of one hour and 40 minutes.

On December 31, 1954, the New York Court of Appeals handed down two significant decisions arising out of the Jelke prosecution—decisions concerning the right of a public trial in criminal cases. In the first case, *People* v. *Jelke,* the Court took the position that a public trial is a "fundamental privilege," and that publicity afforded "greater security to the individual in the administration of justice." Further, the Court declared that publicity "serves as a safeguard against unjust persecution of an accused" and plays "an important role in assuring 'testimonial trustworthiness.' "

However, while the absence of publicity was held to have deprived Jelke of his right to a public trial, the Court of Appeals felt that the action taken in excluding the press did not deprive the newspapers "of any right or privilege of which they may complain." The issue in the sister case of *Matter of United Press Ass'ns* v. *Valente* was succinctly put by Judge Fuld: "Whether members of the public at large, including the press, also possessed an enforceable right of their own to insist that Jelke's trial be open to the public." And the answer was "No." These cases are discussed in greater detail in the *Decisions* section of this issue of the LAW FORUM at page 105.

Another decision of great significance was rendered by Justice Hofstadter of the New York Supreme Court on January 10, 1955. This case bore the rather lengthy and innocuous title of *In the Matter of an Application for an Order Permitting the Interception of Telephone Communications of Anonymous.* "A tapped wire," observed the Court, "is the greatest invasion of privacy possible." Yet, wire-tapping is permitted in the State of New York under

Article I, Section 12 of the State Constitution and Section 813-a of the Code of Criminal Procedure, which give to the Supreme Court (and other courts) "drastic power" to permit telephonic interception at the Court's discretion.

The well-stated headnote to Justice Hofstadter's decision, as printed in *The New York Law Journal,* contains the following summation of the holding in the case: "An application for such an order for the purpose of obtaining possible evidence of gambling should be denied in the absence of a showing of circumstances justifying the exercise of discretion." But the importance of this decision goes far beyond the "holding." Here are some sentences from the opinion which should give pause for reflection by every member of the legal profession:

"The application (for an order permitting wire-tapping) follows the general pattern of like applications heretofore made to me. . . . Though I have in the past signed such orders I have done so with much misgiving. . . . Some years ago I instituted the requirement that every application . . . be supported by the indorsement of an officer of rank in the police department and that written reports of the results obtained from any interception ordered be thereafter submitted to me. Even with these restrictions I have granted the orders with reluctance. . . . The constitutional right to be free from unreasonable interception of telephone communications is fundamental to ordered liberty. The right should be stoutly preserved, not frittered away."

A full discussion of Justice Hofstadter's opinion and other aspects of the wire-tapping problem is scheduled for publication in the next issue of the NEW YORK LAW FORUM.

MAJOR CRIMINAL LAW STUDY

THE largest survey ever undertaken by the legal profession is now under way. It is the first definitive study of criminal law administration to be made on a national scale, and the calibre of its directors indicates the importance of the project. Part of the new American Bar Association research program, the survey will be under the supervision of Major-General William J. Donovan, former director of the OSS. Chief Justice Earl Warren will serve as special consultant.

A grant of $200,000 from the Ford Foundation made possible the beginning of the project, which had been in the planning stages for more than a year.

The project will not be concerned with the causes of crime but with criminal law procedures. Research will cover studies of the police function, the criminal courts, prosecution and defense of criminal actions, and probation, sentence and parole. Results of the study will be made available to the general public as well as to legal, legislative and crime prevention groups.

JUDGE CONGER HONORED

A DISTINGUISHED leader of the bench and bar—and a distinguished alumnus of New York Law School—has retired as United States Judge for the Southern District of New York. Hon. Edward A. Conger will be sorely missed.

In recognition of the "intellectual distinction, scholarship and accomplishments" of Judge Conger, the Federal Bar Association of New York, New Jersey and Connecticut paid tribute to this "just-judge" at its last annual meeting. The views of the New York bar were aptly stated by Dean John F. X. Finn of the Fordham Law School in presenting the "certificate, causa honoris" to the retiring jurist.

"This testimonial . . . is a token of the esteem of lawyers for fearless courage, for utter impartiality, for kindly courtesy, for indefatigable zeal, for selfless devotion to Trust and Justice, for Mercy, for Charity, for Faith in one's Fellow man."

No one could say more; no one would want to say less.

LAWYERS AND THE FIFTH AMENDMENT

OF GREAT interest to the bench and bar is the argument in the case of *Sheiner* v. *Florida,* scheduled for April 6 before the Supreme Court of Florida. At issue is Sheiner's "fitness" to practice law.

More than a year ago, on March 18, 1954, Leo Sheiner, then a member of the Florida bar, was questioned by a United States Senate Subcommittee which was investigating subversive activities in New Orleans. Sheiner refused to testify. When asked whether he was a member of the Communist Party, the witness invoked the Fifth Amendment, declaring that he had the right to keep silent on the ground of possible self-incrimination.

Disbarment proceedings followed. The Florida Circuit Court took the position that while Sheiner had the constitutional right to refuse to testify on the self-incrimination theory, he "does not have the constitutional right to practice law." Sheiner is now appealing the disbarment order to the Florida Supreme Court.

In an unprecedented action last October 16, the Board of Governors of the American Bar Association decided to intervene *amicus curiae* in opposition to the Sheiner appeal. Former United States Senator Herbert R. O'Conor of Baltimore, Chairman of the American Bar Association's Special Committee on Communist Tactics, Strategy and Objectives, was directed to file the necessary brief.

The position of the American Bar Association has been summed up by President Loyd Wright of Los Angeles who made the following official statement:

"The lawyer's responsibilities under the Constitution go beyond those of the non-lawyer. He owes a special loyalty to the Constitution by virtue of being an officer of the Court. The bar cannot tolerate disloyal members."

In arguing that the order of disbarment should be affirmed, the American Bar Association's *amicus curiae* brief makes the following major arguments:

1. The distinction between a person's status as an individual and his status as an attorney and officer of the court is of primary importance.

2. Membership at the bar is not a right but a high privilege dependent upon continuous exacting conditions.

3. Except as limited by the Federal Constitution or its State Constitution, each state through its courts has the sole right to determine the membership of its bar.

4. That petitioner Sheiner has demonstrated his disqualification and unfitness to continue as an attorney and officer of the court by his refusal to answer pertinent and important questions put to him both by the United States Senate Subcommittee and the Circuit Judge who presided at the disbarment proceedings—questions as to whether petitioner was a member of the Communist Party.

"THE LEGAL PROFESSION TODAY"

EIGHT leaders of the New York bench and bar will present their views on different aspects of "The Legal Profession Today" in the Theodore W. Dwight forum series this Spring at the New York Law School. The series will cover the activities of the attorney-at-law—his work in the courts, his ethics and his participation in the functions of the organized bar.

Two of the lectures have already been given—and have been well received. Federal Judge Edward J. Dimock spoke on "The Practitioner in the Trial Courts" on March 15, and Edwin M. Otterbourg, former president of the New York County Lawyers' Association, spoke on "Ethics and the Unauthorized Practice of Law" on March 23.

The series will continue at 8:00 P.M. Wednesday, March 30, with an address by Louis Waldman, president of the Brooklyn Bar Association, on "Ethics, Fair Trial and Free Press."

Lloyd Paul Stryker will deliver an address on "The Art of Advocacy" at 8:00 P.M. Tuesday, April 5, and Hunter L. Delatour, former president of the New York State Bar Association, will give the fifth Dwight lecture at 11:00 A.M. Wednesday, April 13. Mr. Delatour's topic will be "The Work of the Bar Associations."

At 11:00 A.M. Thursday, April

21, Justice Charles D. Breitel of the Appellate Division, First Department, will speak on "The Legal Argument," and Louis Nizer will discuss "The Art of the Jury Trial" at 8:00 P.M. Thursday, April 28. The concluding lecture will be presented by Harold J. Gallagher, former president of the American Bar Association, on "The Law as a Profession" at 11:00 A.M. Tuesday, May 10.

Members of the legal profession are cordially invited to attend.