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THE PROGRESS OF THE LAW: REVISION OF NEW YORK PRACTICE AND PROCEDURE, STATE COURTS AMONG SLOWEST IN COUNTRY, CONSOLIDATION OF THE COURTS, FAMILY COURT, UNITED STATES SUPREME COURT, ADDED INSURANCE BENEFITS, THE ATTORNEY GENERAL'S HONOR RECRUITMENT PROGRAM, JURY-ROOM MICROPHONES, AMERICAN BAR ASSOCIATION, STENOGRAPHIC MINUTES OF CRIMINAL PROCEEDINGS

THE PROGRESS OF THE LAW

REVISION OF NEW YORK PRACTICE AND PROCEDURE

FOR many years the New York Bench and Bar have been concerned with the growing bulk of the various procedural statutes and rules "under which they stagger." In an effort to simplify and streamline the practices and procedures of state courts, the Temporary Commission on the Courts has formed an advisory group to work closely with its Subcommittee on Modernization and Simplification of Practice and Procedure. This group is composed of Dean John F. X. Finn of the Fordham University Law School, Professor Samuel M. Hesson, Albany Law School, Professor John W. MacDonald, Cornell Law School, former U. S. District Judge Harold M. Kennedy, Jackson A. Dykman, former President of the New York State Bar Association and James O. Moore, Jr., State Solicitor General. Professor Jack B. Weinstein of the Columbia University School of Law will act as Consultant and Reporter to this advisory group and it is expected that assistance of additional experts will be solicited as the work proceeds.

STATE COURTS AMONG SLOWEST IN COUNTRY

THE Institute of Judicial Administration has just released its third annual survey which covers the activities of 98 courts in 48 states during the first six months of 1955. The Institute's findings indicate that delays in bringing non-jury cases to trial have decreased 10% from last year to an average delay of 4.6 months. However, the average delay for jury cases is 11.4 months, a slight increase over an average delay of 11.1 months in 1954.

The Supreme Courts of Queens, New York, Kings and Bronx Counties were listed among the twelve principal state courts in the country where the average delay in jury cases is 25 months or more. In Queens County for example, the delay averaged 44 months which was second only to the Superior Court of Worcester County, Massachusetts, where 46 months was the rule. New York County exhibited an average delay of 39 months, Kings County and Bronx County 38 months.

This lag has formed the basis for a study by the State Temporary Commission on the Courts.

CONSOLIDATION OF THE COURTS

SOME months ago, the New York State Temporary Commission on the Courts announced a proposed plan which would consolidate the present state courts into five new courts. These new courts would be as follows: The Supreme Court of Appeals, which would be the court of last re-

sort for the state; the Appellate Court, which would hear appeals taken from all trial courts; the Superior Court, which would have unlimited jurisdiction over all civil and criminal cases; the District Court, which would have limited civil jurisdiction over cases of a limited dollar amount and criminal jurisdiction over offenses below the grade of misdemeanors.

This new system would absorb the Appellate Divisions, the Appellate Terms, the Supreme Court, The Court of Claims, the Surrogate's Courts, The County Courts, the Court of General Sessions of the County of New York, the Children's Courts, The Court of Domestic Relations of New York City, The City Court of New York City, The Court of Special Sessions of New York City, the Municipal Court of New York City, the City Magistrate's Courts of New York City, The District Court of Nassau County, the Justice of the Peace Courts in 929 towns, the Police Justices Courts in 549 incorporated villages, and the Local Lower Courts of which there are 87 in 61 cities outside of New York City.

The proposed plan provides that all judges, except local magistrates outside of New York City, would be continued in office until their current terms expired and that all non-judicial personnel would be absorbed into the new system. During the transition period vacancies in court positions caused by deaths, retirements and resignations would not be filled except to keep courts up to a strength to be determined by the Legislature. Naturally, such a sweeping change as the Commission's plan would require a proposed amendment to the state constitution followed by passage by two successive legislatures and approval by the state's voters.

The Temporary State Commission on the Courts has scheduled ten public hearings to be held in nine cities during the month of October, 1955. These hearings will be held in Buffalo, Rochester, Syracuse, Binghamton, Albany, Glens Falls, White Plains, Mineola, Brooklyn and Manhattan. After these public hearings, a final plan will be prepared by the Commission for recommendation to the Governor and the Legislature. At this date, great opposition to the proposal has been voiced at the Buffalo hearing.

FAMILY COURT

ON September 13, 1955, a Special Term, Part XII of the Supreme Court of New York County, was established to handle matrimony and child custody cases. This court, together with psychiatric and social work services, will be utilized to handle such cases in an effort to provide a more sympathetic and effective forum for the resolution of family problems.

A recommendation for the establishment of a state-wide "family court" which would be similar to although more inclusive than Special Term, Part XII, was introduced recently to the Conference on Juvenile

Delinquency held in Albany, New York, early in October.

The proposed plan would create a Court with as broad jurisdiction as the Supreme Court. All civil and social problems affecting the welfare of children and families would be brought before this Court which would have services similar to its New York County prototype.

At the same conference, a recommendation was made to raise the age limit under the Youthful Offender Act to twenty-one. Under the present age limit, offenders sixteen to eighteen may be tried in the youth parts of the General Sessions or County Courts where penalties are left to the discretion of the presiding judge. Raising the age limit is designed to offer maximum salvage with reference to the rehabilitation of a greater number of Juvenile Delinquents than heretofore.

UNITED STATES SUPREME COURT

IN the June issue of the LAW FORUM, it was noted that a $175,001. libel judgment against columnist Westbrook Pegler and two Hearst newspapers had been affirmed by the United States Court of Appeals for the Second Circuit. An application for a Writ of Certiorari by the defendants was denied by the Supreme Court on October 10, 1955 on the ground that there was no federal question involved.

ADDED INSURANCE BENEFITS

IT was announced on October 4, 1955 by Leffert Holz, New York State Superintendent of Insurance, that liability carriers will indemnify the owners of insured cars for personal injuries caused by the negligence of uninsured drivers. This step will in all probability quiet the clamor for compulsory coverage. Under the new coverage, the owner of the insured car, his spouse and any relative of either, if they live in his household, will be indemnified for injuries suffered by them while they are riding in the insured vehicle or if they are injured while pedestrians. Moreover, the new coverage will apply to any other person injured while riding in the insured car provided it was being driven by the owner or with his consent.

In the case of stock and independent companies, a claimant for benefits will be required to prove that the driver of the uninsured car was negligent. The mutual companies on the other hand, will presume that the latter was negligent, leaving the amount of damages the only issue to be decided.

The maximum liability under the new coverage will be $10,000 to any one person injured in a accident, and $20,000 to all persons injured in a single accident, which are incidentally the present minimum limits for automobile coverage in New York.

Indemnification may be had for

accidents that occur in any state or territory in the United States as well as in Canada.

Under the stock company plan, the claimant may apply for arbitration if there is a dispute as to the legal liability of the uninsured driver and the arbitrator would determine the amount of damages to be paid.

The mutual company plan provides for the appointment of appraisers to determine the amount of liability in case of a dispute. By the use of arbitrators and appraisers, the companies hope to avoid clogging the already congested courts with new litigation.

However, the new plan raises many interesting questions which will have to be answered before long. For example, assuming that an accident with an uninsured driver results in a suit against the carrier's assured, the latter will be defended by the insurance company which will take the position that he was non-negligent. At the same time, it may resist his claim on the ground that he was contributorily negligent. The resultant conflict of interest may prove a decisive roadblock to the success of the plan. Furthermore, what will be the carrier's position where its insured has been injured by a hit-and-run driver? Will it assume that the driver was uninsured or will actual proof of lack of coverage be required?

THE ATTORNEY GENERAL'S HONOR RECRUITMENT PROGRAM

THE Attorney General has just released a report regarding the success of its new Honor Recruitment Program for 1954. Under this program, thirty top graduates of American law schools were selected by the Department of Justice and assigned whenever possible to divisions of their choice.

The purpose of the program is not to attract attorneys to Government careers but to obtain qualified lawyers who will remain with the Department for three to five years. Initial salaries are commensurate with those paid by private firms although they cannot match those paid after several years in private practice.

The Justice Department hopes to extend this program to all agencies of the Government which utilize the services of attorneys. In 1955, it has announced that it will take in forty honor graduates who will be given high level responsibility as soon as possible after assignment to an appropriate division.

JURY-ROOM MICROPHONES

SOME months ago it was disclosed that the University of Chicago Law School under a grant from the Ford Foundation had planted secret microphones in the jury rooms during five civil cases in Wichita, Kansas. This practice was apparently approved by the presiding federal judge in Wichita as well as by the senior judge of the Tenth Circuit, Orrie L. Phillips, pro-

vided the consent of the parties was secured.

After this practice was publicly disclosed, the Senate Subcommittee on Internal Security scheduled hearings. Dean Edward H. Levi defended the use of secret microphones as a legitimate part of a research project investigating the jury system in the United States. Professor Harry Kalven, Jr., the instructor in charge of the jury-tapping project, stated that, although the law school had no immediate plans for further use of microphones, he would not foreclose such a practice in the future if it were deemed necessary for research purposes.

Senators Eastland and Jenner maintained that this action by the law school violated the principle of secret deliberation by a jury and the latter indicated that Congress would have to take legislative action to prevent "this eavesdropping on juries." The subcommittee's report condemned the practice, a stand that was taken by the Attorney General and editorial writers of leading newspapers.

AMERICAN BAR ASSOCIATION

THE American Bar Association has eliminated from the certification that prospective members must sign, any reference to the list of subversive organizations maintained by the Attorney General. Formerly, this certification required applicants to state that, to the best of their knowledge, they did not belong to any of the 300 or more organizations on Mr. Brownell's list.

The new certification reads as follows: "I hereby certify that no disciplinary proceedings are pending against me, that I have never been disbarred or suspended from the practice of law, that I am not now or have I ever been a member of the Communist Party or of any organization which to my knowledge is a subversive organization and that, if elected, I will abide by the association's constitution, its by-laws and its canons of ethics."

Last August, at the Association's convention in Philadelphia, Lloyd Wright, its retiring president, called for a "bloodless revolution" to restore what he referred to as "ancient liberties." This action by the American Bar Association represents its first response to Mr. Wright's warning that the Attorney General's list should be taken with a grain of salt in ascertaining an individual's eligibility to membership in the American Bar Association.

STENOGRAPHIC MINUTES OF CRIMINAL PROCEEDINGS

RECENTLY the New York Court of Appeals decided that a newspaper had no standing to challenge the closing of a court room to the public and the press at the request of the defendant. (See United Press As-

sociation v. Valente, 308 N.Y. 71, 123 N.E. 2d 777). Subsequent to this decision, the New York *Post* sought an order requiring an official stenographer in the Kings County Court to transcribe and deliver to it a copy of a charge made by the judge of that court in a criminal trial held before him and a jury which terminated in the acquittal of the defendant.

The newspaper proceeded by way of mandamus after both the stenographer and the judge had refused to make the transcript available at the former's expense. The newspaper based its position on the ground that it had suffered injury in carrying on its business as a reporter of "public events of public importance." Mr. Justice Di Giovanna held that the stenographic minutes of criminal trials which had not been filed with the Clerk of the Court pursuant to a statute or judicial order, were not records or papers in a public office under Section 66 of the Public Officers Law and that the New York *Post* had no standing to compel a court stenographer to finish it with a transcript of the charge.

The newspaper in its moving papers claimed that the stenographer's refusal was based on a prohibition imposed by the county judge. Mr. Justice Di Giovanna, although stressing that this allegation had not been proved, indicated that it was immaterial in view of the fact that this ban would not protect the stenographer from his failure to perform a legal duty if one existed. However, in view of the fact that no such duty rested upon the court stenographer, the newspaper's petition was dismissed.

FIFTH AMENDMENT

IN the March issue of the LAW FORUM, the case of Sheiner v. Florida, which involved the fitness of an attorney to practice law after invoking the Fifth Amendment, was noted. The use of this constitutional privilege by a pre-trial witness in a civil suit was recently discussed by Mr. Justice Walter in the Supreme Court, New York County. In Southbridge Finishing Co. vs. Golding, the plaintiff moved to compel the defendant to answer certain questions proposed to him during an examination before trial or to strike his answer because of his failure to do so.

During the examination before trial the defendant, who had interposed a verified answer to a complaint which charged him with entering into a criminal conspiracy to cheat and defraud the plaintiff, refused to answer almost every question put to him upon the ground of his constitutional privilege against self-incrimination. Mr. Justice Walter, in denying plaintiff's motion, held that the interposition of a verified answer which denied the material allegations of the plaintiff's complaint was not a waiver of the defendant's privilege against self-incrimination, despite the fact that the answer also contained affirmative defenses. He indicated

that the privilege would be waived only when the party asserting it has actually given incriminating evidence against himself and that the defendant's answer was not tantamount to such testimony.

Furthermore, since the plaintiff in the action was actively engaged in an effort to prove by the defendant's own testimony that he was guilty of the crime alleged in the complaint, it could not be said that the privilege was not invoked in good faith.

UNAUTHORIZED PRACTICE OF LAW

AT last summer's annual meeting of the American Bar Association at Philadelphia, Edwin M. Otterbourg, a past chairman of its Committee on the Unauthorized Practice of Law, delivered an address on this subject which should be of considerable interest to the profession.

Mr. Otterbourg employed as his definition of the term "unauthorized practice of the law," that coined by the Supreme Court of Iowa which called it "the attempt by laymen and corporations to make it a business for profit of giving the public as a substitute, the services of unqualified and unprofessional persons, or to employ and furnish for profit, directly or indirectly, the services of lawyers who may be willing to sabotage professional ethics in order to secure employment."

Until the American Revolution, lawyers, because of their insistence on extremely high ethical standards, were held in great esteem by the public at large. However, during the nineteenth century which witnessed the tremendous growth of the country, standards fell rapidly until the bar itself adopted its Canons of Ethics after 1908.

It was an essential corollary of these Canons that the layman had to be protected from non-lawyers who, unhampered by ethical considerations, were performing legal services. Accordingly, both the bar associations and the courts as well as business groups cooperated to define and delineate the orbit of "legal services."

Mr. Otterbourg traced the development of this joint effort through cases involving accountants, corporations, realtors, collection agencies, life insurance companies, law publishers and others. The end result has been that "the fences consisting of codes of ethics, modern statutes, and decided case law, have been pretty strongly built and are fairly high." However, he urged the profession to be continuously vigilant and to protect the layman by recognizing that the enforcement of professional ethics and the prevention of the unauthorized practice of law go hand in hand.

ATOMIC ENERGY COMMISSION RULES OF PRACTICE

ON August 1, 1955, the Atomic Energy Commission issued proposed rules of practice relating to its licensing program. These rules, when adopted, will govern the conduct of proceedings before the Commission with reference to the licensing of by-product, source and special nuclear material, production and utilization facilities, patents, and operators. These proposed rules may be found in the Federal Register for August 10, 1955. Further information with reference to these rules may be obtained by writing to the United States Atomic Energy Commission, Washington 25, D. C., Attention: Director, Division of Civilian Application.

ATTORNEY AND CLIENT

AN interesting opinion regarding the disqualification of attorneys was recently rendered by the United States Court of Appeals for the Second Circuit. (See Lasky Brothers of West Virginia v. Warner Brothers Pictures, Inc., 224 F.2d 824.) The majority opinion was written by Chief Judge Clark and affirmed an order of the District Court disqualifying a former member of a law firm which had been previously disqualified from handling an anti-trust suit for the plaintiff because one partner had represented the defendant in similar litigation.

After the firm had been disqualified, it was dissolved and the former partner who had not been involved prior to the formation of the partnership became the attorney for the plaintiff. Judge Clark held that this attorney was likewise disqualified because he had been in a position to receive confidential communications with reference to the defendant from his former associate. The subsequent dissolution of the partnership could not cure his ineligibility to act as counsel.

However, Judge Clark refused to disqualify this attorney in a companion suit where he was retained after the dissolution of the partnership by a plaintiff which came to him completely independent of his erstwhile associate and where he rebutted the inference that he had received confidential information from the first attorney. There is a vigorous dissent to this position by Judge Ryan.