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THE PROGRESS OF THE LAW: PRESIDENT APPROVES PLAN TO IMPROVE FEDERAL COURT AND PRISON SYSTEMS; DEATH OF PROFESSOR WORMSER; CITY PRESSES FIFTH AMENDMENT CASE; WITNESS NEED NOT BE WARNED OF RIGHTS UNDER FIFTH AMENDMENT; MOTION PICTURE CENSORSHIP; DRUNKEN DRIVING BLOOD TEST; UNITED STATES ASKS PARENTAL DESERTION STUDY; COURT UPHOLDS UNION SLOWDOWN; ARMY CLEARS GUILT-BY-KINSHIP OFFICER; STATE URGES UNSATISFIED JUDGMENT FUND; MILITARY JUSTICE; FEDERAL COURT CALENDAR EXPERIMENT; TENANT OATH INVALIDATED

THE PROGRESS OF THE LAW

PRESIDENT APPROVES PLAN TO IMPROVE FEDERAL COURT AND PRISON SYSTEMS

THE Attorney General has prepared a general program for 1956 for the improvement of federal court and prison systems, with particular reference to the reduction of the huge backlogs of cases presently pending in the United States District Courts. This plan was approved by President Eisenhower, in Denver, on October 21, 1955.

Under the Attorney General's plan, part of which will require legislation by the Congress, "task forces" of lawyers will be dispatched from Washington to help clear the case load in more congested federal court districts such as New York. In addition, the appointment of some twenty more United States District Judges will be recommended to the Congress. In this way, it is hoped to secure a 25% reduction in the coming year of pending civil cases in federal courts.

Motivated by the recent revelation of jury-monitoring by the Law School of the University of Chicago, Mr. Brownell has secured the President's approval of legislation to outlaw tampering of any sort. Furthermore, legislation will be sought to provide "public defenders" on a salary or fee basis to represent indigent prisoners in the federal courts.

With reference to the federal criminal procedure and prison systems, Mr. Brownell has instituted the following action:

1. The implementation, west of the Mississippi River, of the Federal Youth Corrections Act already in force in the East to help rehabilitate youthful offenders. This would entail the construction of a $7,500,000 correctional institution somewhere in the Midwest.

2. Construction at a cost of $9,500,000 of a new maximum-security prison, such as Alcatraz, to accommodate the growing population of dangerous criminals which has shown a 56% increase in ten years.

3. A nationwide conference on parole practices to improve rehabilitation methods.

DEATH OF PROFESSOR WORMSER

PROFESSSOR I. MAURICE WORMSER, a member of the Law Faculty of Fordham University for more than 42 years, died of a heart attack on October 23, 1955 on the University's campus. Professor Wormser had just attended a lecture by David Sarnoff, the Chairman of the Board of the Radio Corporation of America, who had just received an honorary Fordham degree.

Professor Wormser, who was the oldest member of the Fordham Law School Faculty in point of service, was one of the nation's leading authorities on Corporation Law. He

came to Fordham in 1915 after two years as Assistant Professor of Law at the University of Illinois. In addition to his academic activities, he served as a special assistant United States attorney during World War I, Special Counsel to the New York Transit Commission in 1927; Consulting Legal Counsel to the Kings County crime investigation from 1928 to 1941; and as Editor of the New York Law Journal from 1919 to 1931. Moreover, he was author and editor of many books on the law and on the day of his death a new edition of his case book on Private Corporations was published. He was a member of the New York State Bar Association, the Bar Association of the City of New York, the New York Law Institute, Phi Beta Kappa, Phi Alpha Delta and Tau Epsilon Phi.

CITY PRESSES FIFTH AMENDMENT CASE

IN 1952 Dr. Harry Slochower, a teacher at Brooklyn College, refused to tell a Senate sub-committee whether he had been a communist in 1940 or 1941. Subsequently, he was discharged under a provision of the New York City Charter which permitted the dismissal of municipal employees who refused to answer questions about their official conduct. Accordingly, Dr. Slochower instituted proceedings seeking to obtain reinstatement.

Dr. Slochower was unsuccessful in the state courts and the case is now pending before the United States Supreme Court. In its original brief, the city took the position that the invoking of the Fifth Amendment "permits only two possible inferences—guilt or perjury". Dr. Slochower's attorney stated that this position would eliminate the Fifth Amendment "as a practical matter, from the Bill of Rights."

In a supplemental brief filed on October 24, 1955, the city denied Dr. Slochower's charge that it sought to end the Fifth Amendment but indicated that the use of the privilege by an employee destroys the city's confidence in him. Furthermore, it maintains that "the right to be selected by competition and the right to tenure carry with them the obligation of being open and frank with one's employer as to matters relating to official conduct."

WITNESS NEED NOT BE WARNED OF RIGHTS UNDER FIFTH AMENDMENT

THE New Jersey Supreme Court recently ruled that grand juries conducting general investigations do not have to warn witnesses of their privilege against self incrimination.

The court, in sustaining indictments by grand juries in two New Jersey counties, overruled defendants' contentions that they were not told of their privilege of refusing to

testify on grounds of possible self-incrimination. The majority took the position that there are no witnesses who are unaware of the privilege because of the vast amount of publicity which has recently been given to the Fifth Amendment.

MOTION PICTURE CENSORSHIP

ON October 24, 1955, the United States Supreme Court overruled a decision of the Kansas Supreme Court affirming the refusal of that state's Board of Review to approve the film "The Moon is Blue."

Under Kansas law, the Board of Review is required to ban pictures that are "cruel, obscene, indecent or immoral or such as tend to debase or corrupt morals." The Attorney General of Kansas had argued that since the litigation over "The Moon is Blue" had commenced, the State Board had adopted new regulations limiting and defining the standards of censorship. The purpose of these new regulations was to overcome the objections of the distributor and producer of the film that the Kansas standards for censorship were so vague they violated the First Amendment's guaranty of free expression. The decision of the Supreme Court, which was announced without opinion, compares favorably with a previous ruling in 1952 in which the Court held that New York could not ban the film "The Miracle" on the ground that it was sacrilegious. In that opinion, the Court went further and indicated that the Constitution does not give absolute freedom to exhibit every kind of motion picture but that censorship statutes which are "clearly drawn" will be upheld.

DRUNKEN DRIVING BLOOD TEST

FOR the first time, the United States Supreme Court has considered the question as to whether a state may require motorists accused of drunken driving to submit to a blood test. A driver who had been sentenced by a California court to a $500 fine and 90 days in jail, claimed that the police forced him to submit to a blood test in which a sample was taken from his left arm by use of a needle. Counsel for California denied that force was used and maintained that the driver, who had first refused to submit, later permitted the sample to be taken.

In the driver's appeal, he contended that the taking of the blood sample violated the constitution's prohibition against unreasonable search and seizure, denied him his privilege against self-incrimination and violated the guaranty of due process of law. The high court voted 6-2 to dismiss on the ground that the appeal did not present a federal question.

UNITED STATES ASKS PARENTAL DESERTION STUDY

THE United States Commissioner of Social Security, Charles I. Schottland, in addressing the Fiftieth Anniversary of the Family Location Service on October 24, 1955, stated that the problem of family desertion, often described as "The Poor Man's Divorce," needs serious study in the near future. He revealed that approximately $400,000,000 was spent in 1954 under the Federal Aid for Dependent Children program because of the absence of the father, unmarried parenthood or estrangement resulting from desertion, separation or divorce. Of this amount $30,000,000 was spent in New York City alone on desertion problems.

He plans a meeting in the near future in Washington of federal authorities in this field to determine how governmental agencies can obtain closer liaison in dealing with the problems of desertion.

COURT UPHOLDS UNION SLOWDOWN

THE Court of Appeals for the District of Columbia recently held that a labor union could use "harrassing tactics" to support its lawful demands upon an employer without being guilty of not bargaining in good faith. The N.L.R.B. had ruled that the Textile Workers Union of America (C.I.O.) had failed to bargain in good faith with the employer in that it had engaged in slowdowns, unauthorized extensions of rest periods, and walkouts or partial strikes.

The majority opinion stated that

"There is not the slightest inconsistency between a genuine desire to come to an agreement and the use of economic pressure to get the kind of agreement one wants"

and reversed the ruling of the N.L.R.B. However, it was observed that the employer might legitimately discharge an employee who was guilty of such tactics.

ARMY CLEARS GUILT-BY-KINSHIP OFFICER

ON November 1, 1955, the Secretary of the Army ordered an honorable discharge for the former First Lieutenant Walter K. Novak who had received a "General Discharge" because his father, mother and sister were members of the International Workers Order, an organization listed as subversive by the Attorney General.

A general discharge indicates that a person with a commendable record was nonetheless not as highly satisfactory a soldier as one receiving an honorable discharge.

Former U. S. Senator Harry P. Cain, a member of the Subversive Activities Control Board had severely criticized the Army's handling of this case particularly in view of the fact that Mr. Novak's mother had testified before an inquiry board that she had enrolled him and his sister in the IWO without their knowledge in order to obtain cheap insurance.

STATE URGES UNSATISFIED JUDGMENT FUND

IN the September 1955 issue of the New York Law Forum, at page 334, a new plan for New York State under which insured drivers would be compensated by insurance carriers for personal injuries received by them or their families in accidents caused by uninsured drivers was reported. Also in that issue, at page 342, was a discussion of several legislative proposals which have been advanced in the past few years.

Leffert Holz, New York State Superintendent of Insurance, has submitted to Governor Harriman a proposal listing four alternatives as a substitute for compulsory automobile insurance. He suggests an unsatisfied judgment fund patterned after the one now in effect in New Jersey. In that state, the fund is financed by a combination of surcharges on registration fees for insured and uninsured drivers and an assessment against casualty insurance companies doing business within the state.

The New York fund would compensate innocent victims of financially irresponsible drivers. The maximum that could be collected by any one person would be $10,000. and the maximum of all victims of a single accident would be $20,000. It would be necessary for victims to bring suit against the uninsured driver and obtain a judgment which, if uncollectible, would be paid from the fund, subject, of course, to the financial limits outlined above.

If the victim was injured by a hit and run driver, he would bring suit against a designated state official. If he was unsuccessful in obtaining a judgment, it would be paid from the fund as indicated above.

Mr. Holtz listed four methods by which the money to finance the fund could be raised and they are as follows:

Plan 1

Source	10 Per Cent uninsured	5 Per Cent uninsured
Per insured car	$1.75	.75
Per uninsured car	3.50	$3.00
Assessment against insurance companies per $1 of premiums	.005	.005
Total to be raised (millions)	$10.51	$5.73

Plan 2

Per insured car	$1.00	.50
Per uninsured car	11.00	$7.50
Assessment per $1 of premiums	.005	.005
Amount to be raised (in millions)	$10.84	$5.71

Plan 3

Per uninsured car	$24.00	$25.00
To be raised (millions)	$10.80	$5.71

Plan 4

Per insured car	$1.00	$1.00
Per uninsured car	$15.00	6.00
To be raised (millions)	$10.80	$5.65

This plan would supplement that announced recently by casualty insurers in New York State which does not protect families who do not car-

ry casualty insurance. In urging his plan, Mr. Holtz stated "it is my view that compulsory insurance legislation should be, by its very nature, a last resort. I am not convinced that all reasonable alternatives have been fully explored and tested by experience".

MILITARY JUSTICE

ROBERT W. TOTH was honorably discharged after service with the U. S. Air Force in Korea and returned to his home in Pittsburgh where he obtained civilian employment. Five months later he was arrested by military authorities and charged with murder and conspiracy to commit murder while on active duty in Korea. He was returned to that country to stand trial by court-martial pursuant to Section 3(A) of the Uniform Code of Military Justice which provides that persons in military service may be court-martialed after their separation for crimes committed while in service that are punishable by imprisonment for five years or more and for which such persons cannot be tried in the courts of the United States or its territories. Toth's conviction by court-martial was affirmed by the United States Court of Appeals for the District of Columbia. See Note, 1 N. Y. L. F. 101 (1955).

On November 7, 1955, the United States Supreme Court, with Mr. Justice Black writing the majority opinion, held that Section 3(A) was unconstitutional. In so holding, the Court indicated that it did not mean to close the door on punishment for service men whose crimes are not discovered until they are discharged and it suggested that Congress should provide appropriate legislation for trying such cases in the District Courts of the United States. Mr. Justice Black stated that Congress

> "cannot subject civilians . . . to trial by court martial. They, like other civilians, are entitled to have the benefit of safeguards afforded those tried in regular courts."

Mr. Justice Black was particularly concerned with the fact that a sustaining of Section 3(A) would bring under military jurisdiction over three million persons who had become veterans since May of 1950, the effective date of the Code of Military Justice. The constitutional grounds upon which the Court based its decision were Article III and the due process clause of the Fifth Amendment.

Because of the Supreme Court decision, three turncoat prisoners of war who were held for court-martial were released by the Army. In their case, each soldier had been dishonorably discharged after rejecting repatriation from Korea. However, it is not expected that Sergeant James C. Gallagher, who was recently sentenced to life imprisonment by a court-martial for collaborating with the enemy and murdering two fellow prisoners, would be released despite

the fact that he was honorably discharged before re-enlisting. It is the Army's contention that Gallagher's twenty-four hours as a civilian did not deprive it of jurisdiction over him because it considers the act of discharge and immediate re-enlistment as a purely administrative one to permit a soldier to collect re-enlistment bonuses.

FEDERAL COURT CALENDAR EXPERIMENT

BECAUSE of severe critcism regarding the congested condition of its tort jury calendar, the District Court for the Southern District of New York has adopted a pilot project to assure early trials to such litigants. The chief features of the system are the transfer of calendar control from a clerk to a judge and drastic reductions in the number of adjournments granted to lawyers.

Last April, Senior Judge William Bondy appointed a three-judge calendar committee to survey the congestion and its report indicated that, of the backlogged cases, almost half were inactive ones. Judge Bondy then appointed a calendar judge for the civil jury and civil non-jury trials. Commencing with late September, the following charts indicate the progress which has been achieved thus far:

1. Civil Jury Cases

	P.I. & D.	Other	T'l
Adjourned "Not Ready"	394	97	491
*Marked "Ready for Trial"	173	38	**211
Settled	269	45	314
Dismissed	8	5	13
Off calendar "Not Ready"	35	16	51
Settlement discussions pending	229	16	245
Discontinued	5	1	6
Jury waived by stipulation & transferred to the non-jury calendar	4	2	6
Total cases called Sept. 27 to Nov. 3	1017	320	1337

*Of the 50 cases marked "Ready" in the week of Oct. 28 to Nov. 3, incl., 21 were for months other than November and 8 "Other" of these are companion cases probably to be tried as one.

**Includes 23 marked "Ready" for December, 5 marked "Ready" for January, 1956, and 2 marked "Ready" for February, 1956.

2. Civil Non-Jury Cases

	P.I. & Death	Non-jury Other	Admiralty
Cases called	1,162	147	610	405
Cases settled	271	59	145	167
Settlement discussion pending	136	14	66	56
Off calendar	278	17	192	69
Dismissed	17	3	14	0
Discontinued	38	0	25	13
Marked "Ready"	178	30	92	56
Adjourned, "Not Ready"	144	24	76	44

It has been estimated that by the end of the year, civil jury cases will be reached for trial within four weeks after being marked ready while the non-jury calendar is expected to be current.

TENANT OATH INVALIDATED

ON November 8, 1955, the Supreme Court refused to grant certiorari to the Milwaukee Housing Authority which had asked it to review a ruling of the Wisconsin Supreme Court that tenants of a federal low-rent housing project cannot be constitutionally required to take a loyalty oath. Earlier this year, the New York Court of Appeals declined to rule on the constitutional issue in a similar case involving the refusal of a tenant to sign such an oath. It returned the case to the lower courts for decisions on two minor points, but a new appeal is presently pending before the Appellate Division, Second Department.

PARK SEGREGATION OUTLAWED

THE United States Supreme Court recently outlawed racial segregation in public parks, playgrounds and golf courses. In unanimous rulings, it extended the doctrine of the school segregation cases to public recreational facilities. In one of the two cases which it decided on November 7, 1955, the Court sustained a judgment of the Court of Appeals for the Fourth Circuit that Maryland could not segregate whites and Negroes at public parks and bathing beaches. In the other, it vacated a decision of the Court of Appeals for the Fifth Circuit which had permitted Atlanta to separate the races on municipal golf courses if equal facilities were provided to Negro golfers.

CONSTITUTIONALITY OF OFFICE RENT LAW

THE constitutionality of the New York Emergency Business Space Rent Control Law will shortly be tested in New York City's Municipal Court. Under this law, the Legislature froze rents for many offices, stores and other retail space until July 1, 1956. The Lincoln Building Associates, the owner of a large Manhattan office building, has brought suit to evict three tenants who have refused to pay rents above what they have been paying as statutory tenants.

The landlord, represented by former Supreme Court Justice Samuel I. Rosenman, takes the position that the business rent law is unconstitutional inasmuch as it was a temporary war measure which has endured long beyond all similar restrictions. Attorney General Jacob K. Javits is expected to argue that, since the legislation was originally enacted to meet a severe emergency, only a clear showing that the emergency has ended should upset it. Furthermore, as a temporary measure it should not be challenged on the eve of a legislative session.

The trial, which is expected to start in the middle of November, will result in a direct appeal to the Court of Appeals regardless of which

side is victorious. It is expected that the commercial rent control laws for lofts and factories will be similarly tested in the very near future.

A MAN'S BEST FRIEND

A lady's trusting nature and a policeman's omission recently resulted in a dismissal of a complaint against a Brooklyn dog owner who let her German Shepherd run loose.

After receiving a summons for unleashing her dog, the lady in question forwarded a blank signed check to the magistrate in which she asked the judge to fill in the amount of the fine as she would be out of town on the return date.

The magistrate, appropriately impressed by the lady's confidence in the court, dismissed the complaint when he noticed that the patrolman had omitted signing it.

Thus condoneth faith and forgetfulness.

LOYALTY-SECURITY REGULATIONS DECLARED UNCONSTITUTIONAL

THE Court of Appeals for the Ninth District has just held unconstitutional Loyalty-Security Regulations which permit the use of secret informers. In Parker v. Lester, it granted seven seamen and three longshoremen an injunction forbidding the U. S. Coast Guard from blacklisting them under regulations issued under the Magnuson Act of 1950 which authorized it to bar "security risks" from maritime and waterfront employment.

In a two to one decision, the Court reversed the Lower Court which had held that the ten complainants were entitled to a full summary of the charges against them except where they might disclose the identity of an informant. This, said the majority "as a practical matter gives the Coast Guard carte blanche to withhold substantially any information the officials may choose to keep from the seamen." The court insisted that the system of nameless informers is not of such vital importance to the public welfare that it must be preserved at the cost of due process. In passing, it criticized the Attorney General's list of subversive organizations and refused to heed the government's plea that the complainants had not exhausted their administrative remedies. It would seem that the next step is up to the Supreme Court which refused to meet the problem directly in the case of Dr. John Peters which it decided last June.

NEW YORK JUDGES OPPOSE COURT MERGER

IN the June issue of the Law Forum, mention was made of the plan to reorganize the New York court system which was promulgated by the Temporary Commission on the Courts. Public hearings have now

been held throughout the state and the plan has encountered severe criticism. In the First and Second Departments, witnesses before the Commission were almost uniformly opposed to its plan of placing all types of cases "under one roof" as Surrogates Collins and Frankenthaler put it.

Most of the members of the judiciary who testified agreed that simplification and consolidation was necessary but that they did not like the Commission's proposals. In particular, there was great opposition to that part of the plan which called for the abolition of the Surrogate's Courts as separate entities. The Supreme Court Justices, Second Judicial District, took the position that the New York system was the best in the world and did not need such a drastic overhauling.

The proposals found some limited support from several bar associations as well as the dean of the Fordham Law School but even these endorsements were extremely qualified. It is expected that the proposed plan will be substantially revised before being sent to the Governor and the Legislature with a view to obtaining an eventual amendment to the State Constitution.