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Editorials

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EDITORIALS

RULES FOR CRIMINAL PROCEDURE

There is about to be launched a new set of Federal Criminal Procedure Rules upon the sea that has shipwrecked so many cases. It is to be hoped that the new rules will have the same effect upon the stormy procedural waters as did Franklin's magic cane when the French people sought to have him of lightning rod fame demonstrate his genius.

It is not platitudinous to say that the adoption of this new set of Federal Criminal Procedure Rules will be the most significant contribution to that branch of the law in the past 150 years as these rules are to be a sort of model code, not only for the Federal Government, but it is hoped for the 48 states as well. In other words in order further to promote uniformity and justice and eliminate the chaotic condition that now exists in 49 different jurisdictions, this new streamlined Federal Code will stand as a beacon for the 48 states. If the states will follow the *federal directory beam* there will be a tendency toward one uniform rule.

Priorities preclude a detailed consideration of the symposium or one might show some of the glaring inconsistencies in the law of Criminal Procedure in the 48 states and also in the ten Federal Circuits. Space does not permit the using of a modern *cause célèbre* as Forsyth did in his Essay on Criminal Procedure in Scotland and England by analyzing the famous case of Madeleine Hamilton Smith who was tried for the alleged murder, by poisoning, of Pierre Emile L'Angelier. Still, upon second thought, enough has been said as there is no fun in reading a detective story if you know "who done it" and all about it at the outset. The symposium consists of about a third of the March 1942 issue of the *Yale Law Journal* with a foreword by Arthur T. Vanderbilt, Chairman, United States Supreme Court Advisory Committee on Rules of Criminal Procedure, and a scholarly article, "Objectives of Federal Criminal Procedural Revision" by Jerome Hall, Professor of Law, Indiana University Law School; another scholarly article "From Suspicion to Accusation" by that well known New York lawyer Osmond K. Fraenkel; and another of like quality on "Evidence in Federal Criminal Trials" by Pendleton Howard, Dean of the College of Law, University of Idaho.

The Symposium indicates that the lawyer's most precious freedom . . . Freedom of Thinking . . . is as usual being exercised as not all see eye to eye on every phase of this gigantic task. For instance in the rules relating to evidence there is a difference of

opinion among the doctors but the diagnosis of Colonel Wigmore has made the task an easier one.

In closing this comment it might be added that, paradoxical as it may seem, the new rules are in most instances old rules; that is, rules that have been considerably tried and tested in either one or the other of the 49 jurisdictions. A few are original; that is the result of composite experience. It is interesting to note that just as the theory of the new Federal Rules of Civil Procedure of 1938 was a reversal of a policy that prevailed for 150 years so the theory of the new Federal Criminal Procedure Rules will likewise be a reversal of policy. Go forth, post haste, and procure a copy of the *Yale Law Journal*, (Vol. LI, p. 719, March 1942) for the interesting details that can not be considered in this comment.

John W. Curran

YOUTH CORRECTION AUTHORITY

“Dead-End Justice” in the following pages by our Editorial Associate, the Hon. Joseph N. Ulman, Judge of the Supreme Bench of Baltimore City, is another contribution to the literature on the Youth Correction Authority. In the May number of the *American Bar Association Journal* Professor Jerome Hall of Indiana University offers a trenchant adverse criticism of the “Authority.” His article is immediately followed in the same Journal by a reply that has been contributed by William Draper Lewis Director of the American Law Institute. Readers will recall that the Institute conducted the preliminary investigations and drafted the “Model Act” that is recommended to the states as a means for establishing the Authority.

Professor Hall contends for the control of offenders by the laws and the courts—not by an “Authority” or Board of experts who are deemed to be skilled in the application of science to rehabilitation. Such “experts” do not exist. Moreover, it must be one of our aims to “invoke the ethical principles of our civilization (as expressed in the law) to limit the unmitigated application of science to human relations.”

Dean Lewis’ point is that—the “Authority” notwithstanding—control remains in the law and the courts. “If the court is of opinion that discharge of the person from continued control of the ‘Authority’ would not be dangerous to the public the court shall order the person to be discharged from its control.”

QUESTIONS AND ANSWERS

This JOURNAL will devote a limited amount of space in each number to "Questions and Answers."

In this number they are found on pages 72ff, and as "fillers" on pages 37 and 52.

Questions may be submitted regardless of their classification within the fields of interest that are covered by this JOURNAL. Any question that is of such a character that it can be entertained will be submitted to a member of the Editorial Staff or Advisory Council who is competent to consider it. The proposer will receive an answer by mail as early as possible.

Answers will not be extended discourses. It is expected that, in some instances at least, they may be provocative of further questions and discussion.

Robert H. Gault

CORRECTION

Mr. Carter H. White, Attorney at Law in Meriden, Connecticut, author of the article in our last number entitled: "Some Legal Aspects of Parole" (Pages 600 ff.) has asked us to correct certain items in the article as follows (Ed.):

"Since the article was written, in April, 1941, the New York case of *People ex rel. Pahl v. Pollack*, which was cited in Section VI on page 616, has been reversed on appeal by the Appellate Division of the Supreme Court. The Court of Appeals approved this order July 29, 1941. The effect of this case is that New York state is now in line with the majority of states on the question of extradition of out-of-state parolees.

"In the Appendix, on page 622, the state of Alabama should have been listed under a separate category, 'Board of pardons and paroles created specifically for that purpose.'

"The state of Michigan should have been listed under the second category, 'Parole board within a governmental department.' The Bureau of Pardons and Paroles is included in the Department of Corrections.

"Since the date on which the article was completed there have doubtless been some changes in state parole laws and court decisions on parole. Among the states whose legislatures have passed new parole laws are Florida, Mississippi, and South Carolina.

"The article, as stated in Note 6, page 600, does not take notice of material later than May, 1941, except as above indicated. It was written as a third year paper at the Harvard Law School in Professor Sheldon Glueck's seminar, Administration of Criminal Justice."