

Editorial Section

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NEWS OF THE LAW SCHOOL

The following senior students have been elected to membership in the Order of Coif; Wilfred W. Butschky, Arthur E. Hess, William M. Loker, Jr., Alfred I. Maleson, and Martin A. Mitnick.

The graduating exercises were held on Saturday, June 5, 1948, jointly with the other departments of the University, at the Fifth Regiment Armory in Baltimore. There were sixty-five graduates from the Law School, constituting the largest graduating class in the recent history of the Law School. Of these, six were graduated with honor, *viz.*, Messrs. Wilfred W. Butschky, Frederick J. Green, Jr., Arthur E. Hess, William M. Loker, Jr., Alfred I. Maleson and Martin A. Mitnick. The U. S. Law Week Award was awarded to Mr. Weldon L. Maddox.

Several members of the faculty are teaching in the summer terms at other institutions. Professor John S. Strahorn, Jr. will be on the staff at the Indianapolis division

of the University of Indiana School of Law. Professors Russell R. Reno and Laurence E. Jones and Associate Professor Frederick W. Invernizzi will be giving various courses at George Washington University School of Law.

The Alumni Association of the Law School was most successfully reactivated at a meeting and dinner held Thursday, May 20, 1948, at the Lord Baltimore Hotel, attended by over 300 alumni. Classes as far back as 1887 were represented. The meeting was addressed by President H. C. Byrd, who spoke generally of the development and future plans of the University, and by Dean Roger Howell. A revised Constitution submitted by Paul Due, chairman of a special committee on the revision of the Constitution was adopted and the following officers were elected for the year 1948-49:

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**THE NEED FOR FURTHER PROCEDURAL REFORM
 IN MARYLAND, PARTICULARLY IN THE
 CRIMINAL PROCEDURE**

Within the last decade or two, much has been accomplished in Maryland in the way of procedural reform. In fact, much more has happened than would, perhaps, have been envisioned twenty years ago by any one familiar with the State's traditional conservatism and reluctance to

change. Despite the progress, much remains to be done, and it is proposed herein to tabulate what has been done and what should and could come to pass in the future.

Most important, and most recent, is the Bond Plan, whereby the Court of Appeals was re-constituted on a full-time basis, provision was made for assignment of judges when and where needed, and an improved method of selection of judges was put in force. This constitutional amendment gave constitutional sanction to the rule making power of the Court of Appeals in all fields. Theretofore it was of constitutional basis only in equity, of statutory basis for civil law cases, and not existent at all for criminal cases.

Earlier, the Justice of the Peace system in the Counties had been revised and the Trial Magistrate system substituted, for the greater efficiency of the handling of petty cases. In Baltimore City the People's Court, theretofore of the dignity only of a Justice of the Peace Court, has been given constitutional standing and put on a full-time basis. The Juvenile Court of Baltimore City has, likewise, been translated from a Justice of the Peace Court to a branch of the Supreme Bench of the City, and functions as a court of record, although in the modern tradition of Juvenile Courts.

Several things could yet be done, and presently, to complete the picture of reforming those defects in our procedural system as are now apparent. It is planned to mention the others but briefly and to stress the one indicated in the title, criminal procedure, inasmuch as the movement for accomplishing something about that has attained more momentum at the present time.

The abolition of the separate Orphan's Courts, and the transferring of their functions to other courts is, perhaps, next in degree of ferment in the matter and is being currently considered by the Bar Associations and the Legislative Council. Such a move is desirable and would lead to greater efficiency in the administration of estates.

The movement to consolidate the separate courts of Baltimore City, recommended by the Bond Commission,

but rejected by the Legislature is, apparently, not a live one at the moment. The idea is, of course, desirable and obvious. Related to this is the idea of a central or single Domestic Relations Court (or division of a unified court) for Baltimore City, wherein would be handled the manifold aspects of Domestic Relations procedure now variously distributed, with considerable overlapping among Juvenile Court, Criminal Court, and the Circuit (Equity) Courts. Similar courts exist in other large cities, and the trend is to bring together all aspects of Domestic Relations problem to be handled as a unit.

But most pressing is the problem of the criminal procedure. As a result of the Maryland Constitutional provision that criminal jurors shall judge the law as well as the facts, Maryland has come, through extreme interpretation of the provision, to have the most unique and deviant criminal procedure in the country.

While several other states have similar constitutional provisions, yet in all of them the interpretation given to the rule is a reasonable and proper one, i. e., that juries have the power to disregard instructions and to judge the law as they see fit. But this they have in any state, at least in favor of the acquittal of the defendant. But still, in practically all of American states, the juries are instructed on the law, although they may be told the instruction is but advisory, and they are subject to appellate supervision of the sufficiency of the evidence, to the end that a flagrantly wrong verdict of conviction may be set aside.

This is not so in Maryland, however. The judges are not required to give any instructions, and few do. There is absolutely no supervision of the sufficiency of the evidence at the appellate level, and but little at the trial one, as few motions for new trial are granted. Incidental consequences are that juries have to be waived more frequently than otherwise in order to gain an intelligent hearing on an intricate legal point, with a resultant loss of trial by jury. But there is still no appellate supervision of the judge's rulings, when he is sitting as a jury. Furthermore, the sys-

tem has frustrated the development of a system of Maryland substantive criminal law, inasmuch as the Court of Appeals gets but little opportunity to decide such points, which usually reach appellate courts either by the instructions route or in passing on the sufficiency of the evidence.

Recently, the Standing Committee on Rules of Practice and Procedure of the Court of Appeals of Maryland has given attention to the matter, and a sub-committee thereof has projected certain proposed rules for recommendation to the full Committee and to the Court for adoption. These rules have already been published elsewhere, and it is not proposed to reprint them here. Rather the thought is to advocate the adoption of the rules, either in such form, or by statute or enabling constitutional amendment, as the case may be, to the end that the Maryland criminal procedure may be aligned with the normal American practices, that juries may be properly instructed on the law, that flagrantly wrong verdicts of conviction may be set aside, that the greater use of juries may be encouraged, and that points of substantive Maryland criminal law may the more have to be and be decided by the Court of Appeals so that a definitive body of such law may be attained.

While the draft of proposed Criminal Rules now before the Committee and Court includes other matters not concerned with the jury as judge of the law, yet it is proposed herein to discuss only those so concerned. This segment of the proposed rules, now under discussion, adheres to the constitutional idea that the jurors are the judges of the law by providing that any instructions given shall be but advisory only, and that the Court shall so inform the jury in the course of instructing. Thus, the true limit of the constitutional requirement is preserved, but, as a procedural matter, the trial courts would be required, rather than merely permitted, to give advisory instructions. That is the only deviation from the older practice under the constitution.

Review of the sufficiency of the evidence would be accomplished by appeal from the refusal to grant an advisory

instruction that the evidence is insufficient in law to justify a conviction. Here, too, the constitutional requirement is adhered to, as the jury is still the final judge.

In non-jury cases, the rules propose to assimilate the procedure to civil cases at law. The assumption is that the practice heretofore existing, whereby the same limitations applied to a non-jury case as a jury one, resulted from a statute so providing, not from the constitution itself. The rule making power is capable of superseding a mere statute and thus it is proposed to have complete review of the sufficiency of the evidence in such cases, on the ground that the constitutional provision does not apply full force save in jury trials.

These proposed rules, insofar as they concern the problem of jurors as judges of criminal law and the sequelae thereof seem to have struck a happy medium in the matter. The constitutional idea is preserved intact, that the jurors are the ultimate judges of the law, and that any instructions to them must be advisory only and so declared to be. But, at the same time, as a procedural matter, the jurors are given the benefit of assistance from the trial judges, necessarily to be given, as to what the law is, including the sufficiency of the evidence in law to sustain the verdict.

It is hoped that these rules, or something carrying out their spirit, will be adopted. Under the prevailing practice, the Maryland Criminal procedure is as unique, almost, as was the part-time appellate court prior to the Bond Plan. Adoption of the rules will complete the major picture of procedural reform in Maryland and make the criminal side of the picture as much up to date as the reforms already accomplished have done in their particular areas.