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Editorial Section

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NEWS OF THE LAW SCHOOL

There were 488 students enrolled in the Law School in the Fall of 1950. Of these 262 were in the Day School, and 226 were in the Evening School. The entering Day class contained 114 members, and the entering Evening class contained 80 members. There were 92 colleges and universities represented in the pre-legal training of the student body.

Three members of the full-time faculty taught during the Summer of 1950 in the Summer Session of the George Washington University Law School, in Washington, D. C. Professor G. Kenneth Reiblich taught the course in Trusts. Professor Russell R. Reno taught the course in Estates in Land. Professor John S. Strahorn, Jr., taught the course in Conflict of Laws.

CRIMINAL PROCEDURE REFORM ACHIEVED IN MARYLAND

During the year 1950 there were accomplished several definitive reforms in the Maryland criminal procedure. On January 1, 1950, the new Rules of Criminal Practice and Procedure, promulgated by the Court of Appeals of Maryland, under the rule-making power, after almost two years of study and consideration by the Court and by its advisory committee on rules, went into effect. Likewise, at the November, 1950, election, the voters adopted a Constitutional amendment, which had been proposed by the Legislature of 1949, and thereby also put into effect the covering statute, which had been passed by that Legislature to take effect if the Constitutional amendment were ratified.

While there were other matters covered by the rules which went into effect at the first of the year, 1950, the principal achievement was reforming the impasse that had developed in the Maryland criminal procedure as a result of the Constitutional provision of 1851, followed in the prevalent Constitution of 1867, that in criminal cases the jurors should be judges of the law as well as of the facts. As a result of the extreme interpretation given to this provision over the ninety-nine years that it prevailed intact, the Maryland criminal procedure had become almost unique in the country, in that there was a dearth of appellate criminal law, resulting from the lack of any effective system of giving instructions to juries in criminal jury cases, and from the complete lack of any appellate review of the sufficiency of the evidence in either jury or non-jury criminal cases.

This had long put a blight on the development of a body of Maryland criminal law, and put Maryland in last place among the American states with respect to having a system of substantive criminal law, and with respect to effective supervision of juries, so that the defendants would be protected against unjust verdicts of conviction. In fact, the State of Indiana was next to last in that regard, but even there, under their system of having the jury as judges of

the law, the judges have to give instructions, and there is some vestige of review. While the reforms of 1950 have merely brought Maryland up to the level of Indiana in that regard, at least there is now a vestige of some control of criminal juries at the level of the law.

The situation was reformed in this fashion. The Court, on the recommendation of the Rules Committee, apparently took the position that the lack of review of the sufficiency of the evidence in non-jury cases (where there is no question of granting instructions) was based on statute, rather than on the Constitution, in assimilating non-jury practice to jury practice. Thus, the Court could, by the exercise of the rule-making power, supersede the said statute. It did this by Rule 7 of the new Rules, which provides for a review, as in civil non-jury and equity cases, of a judgment of conviction by the judge without a jury in a criminal case, at the level of the sufficiency of the evidence.

In jury cases, there is and was the double-barreled problem of the review of the sufficiency of the evidence, and of granting advisory instructions to the jury on the details of law. Assuming, as the Court did, that the Constitution required that the jury shall remain the judge of the law, the new Rule 6 provides for advisory instructions to be given to the juries on the law. Such instructions, including an instruction that the evidence is insufficient to sustain a verdict of guilty, may, and at the request of a party, must be given. Thus, within the Constitutional frameworks of 1851 and 1867, the Court, within the same Rule 6, solved both the difficulties of the lack of review of the sufficiency of the evidence and of the absence of mandatory instructions. The prior practice was that the trial judges did not have to give instructions unless they wanted to and they rarely did.

Later in the year 1950, the voters of the State, at the November election, ratified a proposed constitutional amendment along the same lines, which added to the existing proviso of the 1867 constitution about juries as judges of law, a further detail that "the Court may pass on the sufficiency of the evidence to sustain a conviction". This

brought into effect a companion statute which merely incorporated the provisions of Rule 6, Part (b), already in effect about instructions on the insufficiency of the evidence, with an added (and probably superfluous) provision that there could be an appeal to the Court of Appeals from its refusal. Thus, through a combination of the exercise of the rule-making power and a parallel pair of legislative enactments, one a constitutional amendment which was ratified, and the other a statute which was conditioned upon the ratification, we have seen, in the year 1950, the carrying forward of the idea of reforming the Maryland criminal procedure to remedy its previous shortcomings with respect to appellate review in criminal cases.

It will be interesting to see what further will come in the immediate future from either the Court or the Legislature along these lines, whether by way of clarifying any apparent inconsistencies between the Rules and the Constitution and legislation which are already before us, or by way of further strengthening the idea of appellate supervision of the action of juries in criminal cases. Certainly it can be argued that the adoption of the amendment, with a specific clause for a review of the sufficiency of the evidence, does indicate that the restrictive interpretation of the old Constitutional provision, as it prevailed for ninety-nine years, is now to be relaxed in the opposite direction of more judicial supervision of jury actions in criminal cases, through the medium of giving instructions, and reviewing the sufficiency of the evidence.

One point would be whether the provision of Rule 6(b) for an instructed verdict as to the insufficiency of the evidence should be made more binding so that it will be definitive rather than advisory. There is again the problem of whether there should be adopted the practice of judgment N. O. V., by analogy to the civil practice, which practice has been adopted in the civil cases at the level of review of sufficiency of the evidence by the Court.

Other problems are still left unanswered, both under the original criminal rules of January 1, 1950, and the Constitutional change of November, 1950, with its impact

on those rules. What action should the Court of Appeals take, for instance, when it does reverse the trial court for having refused a directed verdict, or a court without a jury for having convicted when it should have acquitted on the basis of insufficiency of evidence? Should they reverse with a new trial, or without a new trial? The answer to that is in doubt throughout the country, and, perhaps, unless a definitive rule be adopted, we shall have to expect the answer to be arrived at by the trial and error method in the courts.

One final point should be mentioned, and that is whether the State should be allowed an appeal from the granting of a directed verdict in a jury case, a judgment N. O. V. if such practice be adopted in jury cases, or an acquittal for insufficient evidence in a non-jury case. In other jurisdictions there seems to be some doubt as to whether the State can appeal, and the matter has been discussed in recent Maryland cases with respect to other points.

It could be argued that, to the extent to which the state is frustrated by a directed verdict which deprives it of the opportunity to go to the jury and get a conviction, it should be allowed to appeal and have another chance, as it can now do when a demurrer (now called motion), is sustained.

These are merely passing suggestions, in remarking on the forward progress made by the State of Maryland in having adopted such definite reforms of its criminal procedure during the year 1950, both by way of Rule of Court on the one hand, and by Constitutional and statutory change on the other, all directed to the same end, and no attempt is made to go into the details of the points here raised.

It is interesting to note how this reform of the criminal procedure fits in to the general pattern of procedural reform in Maryland these past twenty years. Most salient, perhaps, is the re-constitution of the Court of Appeals on a full time basis, under the so-called Bond Plan, which principally effected that reform, although it also involved the permissive assignment of judges around the State in necessary cases, and gave final constitutional sanction to the rule-making power of the Court of Appeals. This latter

was used in the reform of criminal procedure now being discussed.

This rule-making power, long since exercised in Equity and Appeal cases under the Constitution of 1867, had earlier been used in civil law cases by virtue of a statute, prior to Constitutional sanction of the Bond Plan. The Bond Plan merely secured this constitutional sanction for the rule-making power in all situations, which might include five, i. e., (1) the making of rules governing appeals, (2) the rules for admission to the bar, (3) the equity rules, long since accepted, (4) the civil law rules, and (5) for the first time, under the Constitutional sanction, the making of rules in criminal cases, first exercised by the Rules which went into effect January 1, 1950.

Beyond the re-constitution of the Court of Appeals, assignment of judges, and the complete ratification of the rule-making power for all necessary purposes, we have also seen in the last two decades the reform of the Justice of the Peace system in the counties by the trial magistrate system, the similar elevation of the People's Court of Baltimore City from Justice of the Peace status to that of a court of record approaching that of the Supreme Bench, and, likewise the elevation of the Juvenile Court of Baltimore City as a separate division of the Circuit Court of Baltimore City, one of the Equity courts.

Of course, there still remain other problems, such as the abolition of the Orphans' Courts, the consolidation of the separate courts of Baltimore City and the related problem of the creation of an integrated domestic relations court or branch of a unified court to handle the overlapping domestic relations problems that now are distributed among various courts. The current reform of criminal procedure throughout the state is a result long desired, and caps the climax of the movement for procedural reform in Maryland, come what may in the future.

Now that the reform of Maryland criminal procedure is in force by the combined routes of an exercise of the rule-making power, and by Constitutional amendment and covering legislation, it is pleasant to realize that at least two

desirable consequences are in prospect. One is that an accused defendant now has the same protection by way of appellate review of his trial, against an erroneous and unjust conviction, that heretofore a defendant in a civil case for a grocery bill of a few hundred dollars has always had. Further, we may anticipate obtaining some rulings from the Court of Appeals of Maryland on substantive criminal law, which heretofore we have not received because it had no occasion to lay down such rulings, lacking the procedural machinery that would call them forth, i.e., necessarily given instructions by the trial judges, and the power and duty to review the sufficiency of the evidence to sustain a conviction by a trial judge, with or without a jury.

As this number of the REVIEW was going to press, it was learned that the Court of Appeals, on February 15, 1951, had amended the new Criminal Rules to provide, among other things, for a definitive directed verdict, as discussed above, by adding a new Rule, 5A, in lieu of the former Rule 6 (b). The remainder of former Rule 6 (b) was re-lettered. Certain minor changes were also made in Rule 4 (Depositions), and Rule 5 (Discovery and Inspection). See BALTIMORE DAILY RECORD, February 19, 1951.