CURRENT LEGAL PERIODICALS

The Lawyer's Role In Public Administration. Fritz Morstein Marx. 55 Yale Law Journal: 498-526.

Lawyers appear in many different places in administrative offices but Mr. Marx is concerned here not with the lawyer who is the head or advisor to the head of an administrative agency, nor yet with a department of justice lawyer, but with what he calls an "agency lawyer".

Administrative agencies now depend not on power and authority except as a last resort, but on persuasion and consent, and the whole organization including its lawyer should be a unit intent on the attainment of its aims. The two main functions of the lawyer are to assist in the work of the agency and to protect it from attack. He requires "not only command of the law but also inventiveness and grasp of the administrative approach". He has routine duties such as interpretation of the agency statutes, preparation of contracts, orders, regulations and other kinds of instruments, and the conduct of litigation. He should, however, avoid the lawyer's "formalistic approach" and try to reconcile "the needs for procedural clarity and operational elasticity". He should keep in mind the citizens who are affected by the operations of his agency and should develop some form of "grievance procedure" within it for the benefit of citizen and agency.

What qualifications should he possess? He should have not only "legal competence" but also a "sense of relationship". He should be a "philosopher of democratic governance". He should study the problems of other departments of the agency and assist in its public relations programme. Since he is in a position to take a more detached view than his colleagues, he should strive to temper their tendency to drive toward the goal with too little regard for the citizen. These qualifications are not developed by law-school training and suggestions have been made for enriching legal studies "by blending them with social studies". Mr. Marx would prefer a "probationary service" after the law school course, where lawyers who propose to enter administrative agencies would work under senior officials in a "tutorial relationship".

There is a tendency in all organizations for departments to isolate themselves, as for an agency lawyer to sit back and wait for special legal questions. This is called "the main source of

the 'what-the-hell' attitude—the scourge of large-scale organization". In continental practice, high administrative officials are trained in law, so that the legal adviser there does not have to deal with laymen. Also the continental bench is largely "recruited from the administrative service". American administrative law is neither comprehensive nor systematic as is the continental, and American judges have not been trained in public administration. It is therefore much more difficult for the American agency lawyer to "anticipate the judge". However a system of administrative law is being developed and each agency lawyer has the opportunity to help "to shape it".

Legal Problems of the Pre-trial Conference. Earl T. Crawford. 31 Cornell Law Quarterly: 285–301.

Pre-trial procedure has been introduced in order to lessen delay, cut down expense and simplify issues before cases come to trial. It was authorized by a Rule of the United States Supreme Court in 1938 and several states have since adopted similar provisions. A good many cases dealing with this procedure have already been reported and from these much may be learned of the problems that arise in its operation.

Either party may apply or the court of its own motion may order a pre-trial conference. It should be held close to the time of the trial and there may be more than one pre-trial order in a case. Admissions may be called for, a reference may be made to determine issues, or a case may be dismissed. Disputed fact issues should not be determined. An order or report should, after the conference, be filed and the trial should be confined to the issues shown therein. Problems arise as to costs for preparation for trial, which the pre-trial conference may show to have been unnecessary. Other problems are met in appeals in actions where this procedure has been used; misconduct of the pre-trial judge may be alleged, or an appellant may claim that the pre-trial order has not been properly used at the trial.

The writer points out in his concluding paragraphs that the effectiveness of this procedure depends on the "willingness of the court to order the conference" and the "cooperation of the attorneys for the litigants". He suggests that it might be better to have all civil cases with very few exceptions appear automatically on a pre-trial list and to impose penalties for failure to appear at the conference or for disobedience of orders made in consequence thereof.

Psychiatry for the Lawyer: the Principal Psychoses. Gaylord P. Coon, M.D. 31 Cornell Law Quarterly: 327–362.

This is one of fifty or more studies, of interest to members of both the medical and legal professions, which are to appear in certain of their professional journals this year.[1] Dr. Coon considers the affective disorders, dementia praecox or schizophrenia, paranoia, and mental illness caused by organic brain disease.

The affective disorders are depressions, melancholia and the manic reaction. Characteristic symptoms of these are outlined, depressions are classified, probable course and treatment of the manic depressive psychoses are given and legal aspects are suggested. An account of the historical development of the concept of dementia praecox is followed by a statement of its symptoms, examples are given of the delusions and hallucinations of victims of the disease and, as in the case of the affective disorders, treatment and legal aspects are discussed. Paranoia and organic brain disease are taken up in the same way as the others.

Key to Understanding the Law of Contracts (A Modern Rationale of the Law of Contracts). Hugh Evander Willis. 34 Kentucky Law Journal: 165–192.

Mr. Willis says that the law of contracts should be "rerationalized" and that modern research has supplied a number of keys to the understanding of the subject. The place of freedom of contract and that of control by society must first be ascertained. It should be recognized and taught that there are four different kinds of contract, in all of which there is the common element of promise, not of agreement. In offer and acceptance contracts there is created a power in the offeree to make a contract. "There is only one theory of bargain consideration." Express and constructive, promissory and non-promissory precedent, concurrent and subsequent conditions must all be understood, as well as "so-called impossibility", the assignability of rights, the effect of the Statute of Frauds and the position of third party beneficiaries.

All of these matters are considered in the light of their historical development. There is no attempt to say what the law of contract will be in the future although a few suggestions are made for its improvement.

[1] One of the articles in this symposium, *The Medicolegal Aspects of Electroencephalography*, by Dr. Frederic A. Gibbs, appeared in the May issue of THE CANADIAN BAR REVIEW.

Treatment of the Delinquent Adolescent Girl: by Court or Administrative Tribunal. Part I. Dorris Clarke. 21 New York University Law Quarterly Review: 93–111.

In proposals for dealing with the problem of juvenile delinquency, the emphasis is laid on the male offender while little is heard of the need for special treatment of "the adolescent girl, the incorrigible girl, the 'pick-up' girl and the wayward minor girl". Here the writer outlines the provisions of the New York Wayward Minor Act, cites characteristic girl cases, tells how they are dealt with in the Wayward Minor Court for Girls of New York City and suggests rehabilitative techniques that might be utilized.

In part two of the article, which is to appear later, she will suggest and discuss changes which should be made in legislation on the subject and will compare the "advantages and disadvantages of strict judicial process and administrative process in dealing with such problems".

Wedding Law and Equity. Harry M. Fisher. 40 Illinois Law Review: 326–343.

This unusual article takes the form of a conversation between the writer, an Illinois Circuit Court Judge, a lawyer, a minister of the gospel and a businessman. It begins with a statement by the judge that he has been sitting in chancery and the minister's question, "Just what does that mean?"

In answers to questions the judge then explains in simple language the distinction between law and equity, the reasons for the development of a system of equity, the history of the chancery courts and the procedural differences in the two kinds of court. He says that "the one legitimate though not insurmountable obstacle to a complete union between law and equity is the right of trial by jury", explains why this right should not be extended to all cases and tells what types of cases are heard in chancery courts.

He goes on to speak of the efforts that have been made to fuse law and equity: in New York in 1848 by the Code of Procedure which abolished the distinction between "actions at law and suits in equity", in England by the Judicature Act of 1873, in the United States Federal Courts by the Federal Rules of Civil Procedure and in his own state, Illinois, by the Civil Practice Act, passed in 1933, and later statutes. Some of the reforms achieved are described and the businessman, who in a

lawsuit some years ago paid heavy fees for services rendered is deciding "whether his case was one at law or in equity", is assured that he would now be spared that expense.

At the end, the judge's opinion is given that the distinction between law and equity should be abolished, and he presents his programme for bringing this about.

Contempt Procedure in the Enforcement of Administrative Orders. Reginald Parker. 40 Illinois Law Review: 344–354.

How are administrative orders to be enforced? An American administrative agency may not, itself, punish a party who violates its order, but may apply to the courts in contempt proceedings, or an individual concerned may have the right to apply.

A National Labor Relations Board attorney tells how this works out in practice. Court proceedings must be taken, the defendant may defend and the agency must prove its case. An order was made by this Board in March 1937, which was disobeyed. The Supreme Court denied a writ of certiorari in May 1938. Contempt proceedings were then brought promptly, but the defending company was given until July to comply. A new contempt proceeding was instituted, a special master was appointed who took evidence and presented interim and final reports; the latter was approved in January 1945. The master's fee was fixed at $25,000. A board, which may be called an "expert body", makes its decision but the whole matter must be considered anew by a court and a master who has no special knowledge or training in the field in question. As other examples, company union cases are cited.

Mr. Parker would prefer to have this situation cleared up by the enactment of a statute for the "execution of court-enforced administrative orders" since it would probably be unconstitutional to vest the agencies themselves with the contempt power. It does not seem probable that such a statute will be passed but he refers to a recent case where the court criticized the practice of reference to masters not specially trained and to another, a 1944 case, in which a matter was referred "for investigation and report" to the board that had made the order. He says that "if this practice prevails, administrative agencies will continue to function until a case is really closed".

G. A. JOHNSTON

Toronto