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BAR OF OTHER STATES

Notes on Current Legislative Proposals in the Criminal Procedure Field

(By PAUL SANDERS, Assistant to the Director of the National Bar Program)

The Hauptmann case brought some aspects of criminal procedure very vividly to the attention of the public. Alibis played a great part in the trial, both for the prosecution and the defense. In that connection, it is interesting to note that Attorney General Wilenz did not make use of the law passed in New Jersey in 1934 requiring the defendant in a criminal case to give advance notice of an alibi defense. Such a measure has been approved by the American Bar Association, and many bar association committees are at the present time urging its passage in their respective state legislatures. The novelty of the law in New Jersey should not have deterred the prosecution, in view of the fact that the law has been in effect in several states for a great many years and has proved of untold value. It has never been challenged by the courts.

No case, barring one where a juror has died or become otherwise incapacitated, ever exhibited the need for the extra or alternate juror law more than did the Hauptmann case. Section 285 of the Model Code of Criminal Procedure of the American Law Institute which provides for such a law begins with the premise, "Whenever in the opinion of the court the trial is likely to be a protracted one . . ." Some of the jurors in this celebrated case were ill; luckily nothing serious occurred. The Committee on Criminal Procedure of the New Jersey State Bar Association, headed by W. A. Wachenfeld of Newark, is considering this matter and will make recommendations during this year.

Judge Trenchard's freedom in discussing the matter with the jury is based on the common law power of the judge to act as something more than a mere umpire. Section 325 of the American Law Institute Code would give to every judge the power to comment to the jury on the evidence and the credibility of witnesses. The usefulness of such procedure cannot be denied in a case that has lasted for weeks and where the jurors have heard much conflicting testimony, but there is need for such a guiding hand in cases that do not last so long and do not have such great notoriety.

A. E. Montgomery of Tulsa, Oklahoma, a member of the House of Representatives of that state, made his debut as a legislator by successfully procuring the passage by the House of a bill providing for an advance notice of alibi in criminal cases.

Several improvements in criminal procedure are being urged by the Law Reform Committee of the Iowa State Bar Association of which Judge C. F. Wennerstrum of Chariton is chairman. Bills have been presented to the Legislature providing for (1) a requirement of advance notice of the defense of insanity and alibi, (2) a provision giving the defendant the right to waive the jury in the trial of indictable offenses if capital punishment is not involved, (3) an authorization for the impaneling of alternate jurors for trials which are likely to be protracted, and (4) a restriction upon the right to withdraw a plea of guilty by placing this matter within the sound discretion of the trial judge. Most of these measures are incorporated in the American Law Institute Model Code and have the approval of the American Bar Association.

Professor Rollin M. Perkins of the College of Law of the State University of Iowa is a member of this Law Reform Committee and had charge of the preparation of the bills which the committee is recommending. Professor Perkins has been instrumental in the past in securing many improvements in criminal procedure in Iowa, notably the introduction of the short form of indictment.

A provision allowing comment by the court or counsel upon the failure of an accused person to testify in a criminal case is receiving attention in several legislatures. In Missouri such a bill has the backing of the Committee on the Legal Aspects of Criminology of the Missouri Bar Association, headed by Leland Hazard of Kansas City. Mr. John T. Hubbard of the Litchfield County Bar Association (Connecticut) has drawn and introduced a similar bill in his state. The Georgia Bar Association is making a double-barreled attack upon the criminal procedure situation in its state through the activity of the Law Reform Committee, headed by Solicitor General John A. Boykin of Atlanta. A bill which includes portions of the American Law Institute Model Code and the recommendations of the American Bar Association has been introduced in the Senate by the Honorable W. M. Lester and in the House of Representatives by the Honorable Bond Almand.

The Utah State Bar Association is working actively for the introduction of the short form of indictment, based on the American Law Institute Code, in that state. C. A. Badger of Salt Lake City is head of the Criminal Code Committee of the State Association, which has been active in the preparation of recommendations for the Association.
