Procedural Reform

And the Apostles of Status Quo

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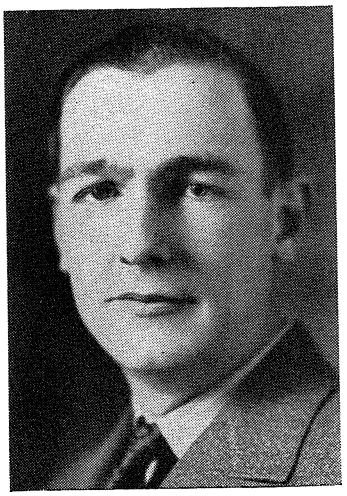
Remedial Procedure Committee

Every active practitioner is, or should be, intensely interested in the results likely to flow from the labors of the advisory committee appointed by the Supreme Court. While a fixed policy as to the extent of reform or actual change of procedural rules in force has not been officially announced, there are definitely straws in the wind.



"What of the long-suffering litigants and laity?"

The newspaper report of the last meeting that most of the Committee were disposed to undertake alteration of "only a small percentage" of the statutes under investigation does not fully state the case. Indeed, members there were who advocated a policy of making *no* changes, or at best, inconsequential ones, which would chiefly operate to transfer the rule-making power to the Supreme Court, so that it could at its leisure gradually change the rules to suit itself. I hasten to say there was some opposition to this proposal; but such divergent opinions as to the proper scope of the work of this committee prompts a re-examination of the purposes of its creation, as well as the expected benefits.

In conferring the rule-making power on the Supreme Court, the Legislature pointed out the unnecessary delay and expense often occasioned litigants by procedural rules enacted by it; the unnecessary reversals and new trials upon technical procedural grounds, and the consequent criticism of the courts calculated to undermine their prestige in public estimate. That it was essential to place the rule-making power in the Supreme Court, which it deemed particularly qualified "to mitigate and cure these evils." Such, said the lawmakers, were the compelling reasons creating the emergency and imperative public necessity that allowed immediate passage of the Act. Apparently, the Legislature pointedly asked the Court to do something; not simply to accept the rule-making power for possible future use. If the same or a highly similar code of practice to that now existing should be reported to the Legislature as new "Rules" in 1941, it should, and likely would, withdraw the rule-making power of the Court.

What does the Supreme Court expect of its appointed? In bringing the committee into existence, the Court requested the preparation and filing of "a full set of suggested rules of practice and procedure, as contemplated by the Act." The filing of the existing statutes, or a milk and water change of wording in the same, should cause the Supreme Court to wonder why it sought aid from a committee in the first place. The Court is properly hesitant to overturn by its judgments earlier decisions on procedural matters which have become *stare decisis*. It now has opportunity to avoid by rule the statutes and decisions which produce the unhealthy situation found by the Legislature. That their number is legion cannot be gainsaid. Does it desire the committee to shift most of the burden of correcting these abuses to it, so that the work can be gradually accomplished at the cost of time and diverted from an over-crowded docket? It is believed that if the work is not fully performed by the committee, it will never be expedient for the Court to study our procedure as a whole, to the end that a simple and properly integrated system may be adopted.

Last, and unfortunately least in the minds of some, what of the long-suffering

litigants and laity? It will particularly please the public to know that the Legislature has, as an emergency act, extended a means of relieving Court delay to the Supreme Court, which some of its appointed committee has decided must be used gradually throughout the years to come.

It must be said for Texas lawyers as a class that they manifest a deep interest in the needed change and reform. Many suggestions from local bars and individuals must have been received by the committee. I dare say none, or few, of them proposed the continuance of the existing system as a relief of existing evils. Some of them, I think properly, sought what a few of the committee would call "radical changes." Why a system of practice and procedure which has resulted in criticism of the Courts calculated to undermine their prestige in public estimate should not be radically changed, is difficult to understand.

It is hoped that the stimulus from the Bar, recognized as needful, will not be ignored by the committee. The last convention of the Texas Bar Association recommended the adoption of the federal rules insofar as practicable. This plan of change was reported unfavorably by a subcommittee at the last meeting. A splendid group of recommendations has been submitted by the Lubbock Bar Association.

From the expressions of the committee members at the last meeting, the odds should be about four to one that the recommendations are entirely too radical for consideration.

Procedural reform in Texas is at the cross-roads. Will the committee members who want to improve conditions through decided change prevail, or will the Apostles of Status Quo win the day?