Denver Law Review

Volume 23 | Issue 9 Article 6

January 1946

Current Trends in Federal Jurisprudence

Edmund J. Brandon

Current Trends in Federal Jurisprudence

in this chosen profession could be brought about by a revised educational system this above would be well worth the effort. Many a man today ekes out his living in another business or profession because the uninteresting drudgery of a law school course, the embarrassment of his first legal defeat caused by lack of knowledge, or inability to cope with a situation, sent him away from the legal profession in which he might have risen to great heights. The lawyers as a whole, and not he should bear the blame, for in their own quest for personal success perhaps they have failed to take time out to lend a helping hand to those who looked in vain for guidance and assistance.

A committee of the State Bar of California delving into this subject might unearth tremendous support behind such a proposed change in our educational system if the comments of lawyers throughout the state were solicited. Through public appeal they could secure the gratuitous services of able lawyers who would be grateful for the opportunity of contributing in some manner to the welfare of the lawyers of tomorrow and enabling them to obtain a proper foundation for their future.

Suggestions and recommendations from lawyers relative to this subject would be welcomed.

Current Trends in Federal Jurisprudence†

By HON. EDMUND J. BRANDON *

The progressive character of federal jurisprudence has recently received enhancement from two distinct developments in the fields of substantive and adjective law.

Substantively, a most laudable project has been undertaken by the House of Representatives Committee on Revision of the Laws in initiating a program of codification by which each of the present 50 Titles of the United States Code will be re-enacted as separate entities.

At the present time, the only official text of federal enactments is to be found in the Statues-at-Large, which are published in bound volumes at the end of each session of the Congress. These volumes are generally available only on the shelves of large law libraries, and are at best rather cumbersome and unmanageable legal tools. The two other generally available sources of federal statutes—the four-volume edition of the United States Code with annual Supplement, published by the Government Printing Office, and the United States Code Annotated, printed commercially,—are only *prima facie* evidence of the law.

---

† Reprinted by permission from the Bar Bulletin of the Bar Association of the City of Boston, April, 1946.

* United States Attorney for the District of Massachusetts. The views expressed herein are those of the writer, and are not to be construed as those of the Department of Justice.

In order, therefore, that a more compact edition of the United States Code may be available to the public and the bar with an official imprimatur, the house committee has undertaken the task of codifying federal substantive statutes so that the public and the bar may thereafter rely upon the text in the code as authoritative.

It is the aim of the house committee to remove from the body of federal legislation all enactments or portions of enactments which are duplicitous, obsolete, or redundant. Uniformity of phraseology, imposition of penalties consistent with the relative gracity of offenses, and elimination of incongruities, are three of the aims of the revisers. The ultimate goal is to re-legislate all of the permanent and general laws contained in the present code, so as to make available a basic scheme within and around which all future amendatory enactments may be drafted.

To date, the most ambitious re-codification undertaken is that by which Title 18 of the United States Code, relating to crimes and criminal procedure, has been revised and redrafted as a logical, harmonious, and consistent entity. The re-codified draft of this title is now pending before the present Congress in the form of a bill [1] which has been favorably reported by the house committee.

The committee intends to perform a similar operation on each of the 50 Titles contained in the present code, and as the work of re-drafting proceeds, the bar may anticipate the gradual evolution of a workable, compact code of federal substantive law.

The second major development is the recent promulgation of a body of procedural rules to govern criminal practice in the federal courts.

The trend toward procedural uniformity in federal jurisprudence began with the adoption of the Federal Rules of Civil Procedure in 1938.[2] The universal approbation with which they were received, and the success of their operation served as inducement and encouragement to promulgate a similar body of procedural canons to govern criminal procedure.

Accordingly, in 1940, the Congress passed an Act [3] empowering the Supreme Court to appoint an Advisory Committee to draft a similar set of rules relative to criminal procedure. The enabling act provided that the rules, after adoption by the Supreme Court, should be submitted through the Attorney General to the Congress. The submission was made by the Attorney General on January 3, 1945, and the rules lay before the entire First Session of the 79th Congress which adjourned on December 21, 1945. The rules provided [4] that they would take effect on the day which was three months subsequent to adjournment of the first regular Session of the 79th Congress,

[1] H. R. 2200, 79th Cong. 1st Sess. (H. Rept. No. 152).

[2] The Act of June 19, 1934 (48 Stat. 1064) authorized the Supreme Court to draft and promulgate the civil rules.

[3] Act of June 29, 1940 (54 Stat. 688).

[4] Fed. Rules of Crim. Proc., Rule 59.

and as a result, they became operative in all judicial districts of the United States on March 21, 1946.

The new rules constitute a framework of reference to which an attorney may turn and find in one place the precepts of procedure which govern the conduct of a criminal trial, and under which the rights of his client are determined. The rules have been drafted so as to achieve clarity, uniformity, and precision, without, however, endeavoring to provide for regulation of minute details or to preclude the adoption of subsidiary local rules which are not inconsistent. None of the traditional safeguards which have become imbedded in Anglo-American criminal jurisprudence have been abandoned, and such innovations as have been introduced are consonant with the fundamental principles of fairness and justice.

The rules serve as a guide to the lawyer throughout a federal criminal trial from complaint through verdict. With their adoption, the task of subjecting the entire field of federal procedure to regulation by judicial rule-making has been completed. This means that the practicing attorney may now proceed with certainty and confidence in both the civil and criminal sides of the federal courts. Pamphlet copies of the rules and the Advisory Committee annotations thereto are available from the Government Printing Office at Washington at nominal cost, and they should certainly be made a part of the lbirary of every practioner.

In connection with the general subject of federal jurisprudence, it may be well to refer to the Federal Register Act of 1935.[5] Experience has shown that only a small portion of the membership of the bar is aware of this legistion and its importance as a landmark in the field of federal administrative law.

The Federal Register Act provides for the establishment of a division of the Federal Register in the National Archives. This division is charged with the duty fo publishing in the federal register (published daily) all presidential proclamations, executive orders, and administrative directives and regulations of general applicability having the force of law which are promulgated by the various executive and quasi-judicial federal agencies. All *permanent* sub-legislation of this character must be published in the Federal Register and thereafter incorporated into the Code of Federal Regulations. This code, together with the register, constitutes the official and primary source of reference for information concerning the rules, regulations, and procedural requirements which interpret, implement, and apply the provisions of federal regulatory statutes.

The importance of this body of federal sub-legislation is strikingly illustrated by the fact that the statutes contained in four volumes and one supplement of the United States Code require approximately 45 volumes of the Code of Federal Regulations in order to contain the orders and directives issued pursuant thereto.

---

[5] Act of July 26, 1935 (49 Stat. 500; 44 U. S. C. 301 et seq.)

It will be conceded, I think, that the vast majority of the legal relations between the citizen and the general government are now primarily administrative in character. Consequently, it is transcendently important that the members of the legal profession familiarize themselves with this vast body of executive and quasi-judicial law, in order that they may ascertain not only its nature and character, but the procedure by which it may be effectively applied in order to enable them more competently to advise and assist their clients.

Letter to the Editor

Editor:

May this organization take this means of calling your attention to the very urgent necessity of re-organizing our city courts. You are doubtless aware of the unsatisfactory condition of our justice courts—judges with grossly inadequate pay, one court over-loaded with an undue proportion of the business—numerous delays and continuances, litigants and witnesses compelled to waste hours upon hours in waiting, lawyers unwilling to handle cases in inferior courts without fees greatly disproportionate to the amounts involved, an impractical and unused small-claims statute, a system which by reason of its burdens operates to deny remedy to thousands of meritorious claims, and leave the public with the definite impression that if the litigant wins he loses.

Los Angeles has a wonderfully successful small claims court—lawyers are not permitted to appear therein, any citizen may have his small claim adjudicated by filing an affidavit, paying a docket fee of $1.00, obtaining service by registered mail, escaping continuances and delays, having his case heard summarily (usually by way of conciliation). One of the best services that could be provided for the people of Denver would be a small claims court similar to the one in Los Angeles.

Worthy of consideration is a suggestion that Denver should have a municipal court, with about four judges, embracing justice court jurisdiction, two police courts (one a night session) and one handling exclusively small claims limited to $50. No added expense would fall upon tax-payers—such courts are self-supporting.

We hope you will take an active interest in the proposed re-organization of our lower courts. It will be necessary to enlist the interest of lawyers, business men and property owners, and particularly the Mayor, the City Attroney, the Council, Chambers of Commerce and service clubs.

Thanking you and anticipating your cooperation, we are

Very truly yours,

DENVER HOTEL AND APARTMENT OWNERS' ASSN.
By PATRICK M. WALKER, President.