

Removal of Some Court Cases Is Opposed by Judge Kaufman

4-30-76

NY

By TOM GOLDSTEIN

Taking issue with many of his colleagues who have increasingly called for diversion of large classes of cases from the judicial system, Judge Irving R. Kaufman urged yesterday that many of these cases should not be removed permanently from the courts.

"Except for those matters where the adversary process may in fact have little value, dejudicialization may be an inadequate and inappropriate palliative," said Judge Kaufman, the chief judge of the United States Court of Appeals for the Second Circuit.

He spoke on the third day of a four-day conference on "American Law: The Third Century" at the New York University School of Law.

Victimless Crimes

In his speech, Judge Kaufman distinguished between cases like automobile accident litigation and consumer claims for defective merchandise that he said should be diverted from the judicial system only "for the nonce" and other cases, like, victimless crimes, that should be removed altogether.

For some time to come, the judge said, "neither the parties nor the public will be able to afford processing many cases which in the best of all possible worlds would be decided at trial."

But, he added, "if delay and cost were not insurmountable obstacles, I insist that there is no fairer or more sensitive method than a trial to determine "whether an alleged lumbo-sacral sprain is in fact only a feigned whiplash, or whether the manufacturer or the retailer was responsible for a child's defective bicycle brakes."

Arbitration Alternative

In the past year, in conferences similar to the one at New York University and in law review articles, a growing number of judges and legal scholars have recommended that many familiar types of lawsuits be removed from the courts and be resolved by alternatives, such as arbitration.

For example, at a conference earlier this month in St. Paul, Chief Justice Warren E. Burger said: "With few exceptions, it is no longer economically feasible to employ lawyers and conventional litigation processes for minor or small claims."

Justice Burger, who called for greater use of arbitration, is the final speaker at the N.Y.U. conference tonight.

The conference has been divided into two parts: a look at the law in the next century by a group of law professors and judges and an analysis of the future of law by several non-lawyers.

Concern Expressed

Speaking on law from the perspective of journalism, A. M. Rosenthal, managing editor of The New York Times, expressed concern over the erosion of First Amendment rights.

"I am not saying that the First Amendment has been wiped out," Mr. Rosenthal said. "I am saying as an editor looking at the state of press law 200 years after the American revolution that there are clear signs that it is being endangered."

Referring to a recent "epidemic" of judicial restraining orders against the press, Mr. Rosenthal said: "Instead of acting as judges, too many members of the bench have begun to act as censors, reaching out of the courtroom to try to control the reporter's typewriter and the publisher's press."

Other speakers at yesterday's session were Ralph Nader, the consumer advocate; Mrs. Robert B. McKay, who presented a paper on behalf of her husband, the director of the Program on Justice at the Aspen Institute for Humanistic Studies; Bernard Schwartz, a professor at the N.Y.U. School of Law and organizer of the conference; Richard B. Morris, a professor emeritus at Columbia University; Senator Robert W. Packwood, Republican of Oregon, and Andrew M. Greeley, director of the Center for the Study of American Pluralism.

Laborites Boycott Brazilian

LONDON, April 29 (Reuters) —Forty Labor Party Members of Parliament decided today to boycott all official functions during a state visit by President Ernesto Geisel of Brazil next week. President Geisel has become the target of a protest movement by leftists against repression and political detention in Brazil.