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Cuts Imperil Law Revision Commission

57-Year-Old Panel Lobbies For Continued Existence

BY GARY SPENCER

ALBANY — The New York State Law Revision Commission was created 57 years ago as a scholarly "caretaker" to guide the development of the law through statutory reform, making it the oldest agency of its kind in the common-law world.

But time — and the state's ability to pay for the service — may have passed it by, according to Governor Cuomo. He has proposed abolishing the commission to save \$419,100 in the next fiscal year, explaining that the job of modernizing the law can be left to "legislative studies, recommendations of state agency counsels, and reports of various lobby groups."

Although the commission is seldom in the news and is not really accustomed to crisis management, it has set aside its legal research in favor of a lobbying campaign, clinging to the robes of its intellectual father, Judge Benjamin Cardozo, and calling on bar associations and a wary Legislature for help.

It has found some support. Assembly Judiciary Chairman G. Oliver Koppell has urged budget makers in his house to restore the commission's funding, praising its ability to carry out in-depth studies and produce rec-

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Law Revision Panel

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ommendations "without a lot of political baggage." Senate Codes Chairman Dale M. Volker is one of several senators pushing for restoration. The commission has won no promises of deliverance, however.

"They have a great tradition and history. It would be a shame to see them go," said James Yates, counsel to Assembly Speaker Mel Miller. "But it's too early to say anything about restorations on any aspect of the budget."

The Governor's recommendation was made "with regret," according to his counsel, Elizabeth D. Moore, who said, "I don't think any entity can fully do the job that the Law Revision Commission has been doing." But the state's \$6 billion deficit demanded sacrifices and "many other valuable programs were cut as well," she said. The best hope now would be to "reconstitute" the commission when fiscal health returns in some future year, she said.

Commission Chairwoman Carolyn Gentile said, "The irony here is that the commission was created in 1934, in the depths of the Depression," when money was even more scarce.

Promises of savings were offered the citizens of New York by Senator John L. Buckley, who sponsored the bill that year. "Temporary commissions or committees are constantly being set up by the Legislature to revise this or that part of the law," he wrote. "The proposed commission of experts would not only give continuity and coherence to such work, but what is equally important, would be an economy to the state in obviating the need for so many temporary bodies."

Cure for Injustice

But the true purpose of the commission was legal reform, not economy, a mission Judge Cardozo outlined a decade earlier, when he called for a systematic approach to curing "anachronism and injustice" in the law in his 1921 article, "A Ministry of Justice," 35 Harv. L. Rev. 113. "Legislature and courts move on in proud and silent isolation," he wrote. "Some agency must be found to mediate between them."

In keeping with his view that the job called for scholars who were "expert" and "disinterested," the statute requires that at least two law professors be among the five commissioners appointed by the governor. There are three on the current commission: Robert M. Pitler, of Brooklyn Law School; Albert J. Rosenthal, of Columbia University School of Law and St. John's University School of Law; and Deborah A. Eatts, of Fordham University School of Law, who was recently nominated for a federal judgeship.

Ms. Gentile, a Manhattan lawyer, is an adjunct professor at Fordham. The fifth member is Kalman Finkel, director of the civil division of the New York Legal Aid Society.

The staff of four attorneys and three secretaries is headed by University of Buffalo law professor Kenneth F. Joyce.

Salaries for the five commissioners were dropped as part of last year's budget. The \$419,100 the Governor now is trying to save covers staff salaries, benefits and office expenses.

Major Revisions

The commission is charged with the task of "discovering defects and anachronisms in the law" and recommending reforms to bring civil and criminal law "into harmony with modern conditions," and its 57 years have been spent on a generally quiet series of research projects in pursuit of that mission.

The Legislature has enacted more than 300 statutes it has developed, ranging from technical amendments to major undertakings that included a revision of the Uniform Commercial Code in the 1950s, development of the State Administrative Procedure Act in the 1970s, and codification of the Insurance Law and reform of the insanity defense in the 1980s.

Still pending are projects to devise a state code of evidence, to reform the laws on conservatorships and to enact a new article of the UCC governing the leasing of personal property. The commission also has begun, at the request of the Legislature, a study of the plight of the mentally retarded in the criminal justice system.

The commission has been working on the code of evidence for more than a decade, a record of frustration that Ms. Gentile cited as evidence of its "staying power." She also said the Legislature could not match its "objective and impartial" approach to issues, echoing the pitch made by the commission in a memorandum mailed to legislators and bar associations last week.

But Mr. Yates disagrees on that point. "Anyone who claims to be non-political when they're drafting a law, especially in a controversial area, is a plain flat-out liar," he said.

"If I were to make the case for them, I'd make it on the fact that they bring in expertise that's unmatched in the Legislature," he said, "they have the time to deliberate, and they're thoughtful and careful."