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Is the Public Fair

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ORGANIZATION OF COURTS

Under that heading, the Journal of the American Judicature Society, in the October, 1927, issue, reprints an address delivered by Dean Pound, of Harvard, before the Minnesota State Bar Association in 1914. Perusal of this address is commended. We have space here for a just a few isolated excerpts:

"Where a generation ago, we were agreed to be proud of our peculiar doctrine of judicial power over unconstitutional legislation, that doctrine has become the subject of constant and even violent attack, and attempts to turn constitutionality from a question of law to a question of pure politics find some support even in the legal profession. . . The tendency is strong to take away judicial review of administrative action wherever it is constutionally possible, and where it is not possible, to cut down such review to the unavoidable minimum. . . . Legal history could teach us that no one may be trusted to dispense with rules but one who knows the rules thoroughly and knows how to apply them on occasion. . . . Four problems confront the American lawyer: 1. The world-wide problem of socializing the law, of defining the conception of social justice which is to replace the individualist or so-called legal justice which we have, of defining social interests and studying how far these are subserved by securing the several individual interests which the law has worked out so thoroughly in the past; 2. The peculiarly American problem of improving judicial procedure so as to make the adjective law an effective instrument for upholding and enforcing the substantive law; 3. The organization of courts and thus, in consequence, the organization of judicial business; and 4. The organization, training and professional ideals of the Bar. . . . We have hampered the administration of justice by the extreme to which we have carried the decentralization of courts. . . . The court (Municipal Court of Chicago) has been able to set up a bureau of information, to which the citizen may apply to learn what the court can do for him and how to apply for its assistance, or, if it has no jurisdiction, whither he should turn. It has also provided a woman 'social secretary,' to whom women may apply in matters of delicacy. And what is more useful still, it has been able to work out and constantly to improve a system of judicial statistics."

Pleading for a similarly unified court generally, he cited the following advantages: "1. It would make a real department of justice; 2. It would do away with separate courts with hard and fast personnel; 3. It would do away with the bad practice of throwing cases out of court and permit their assignment to the place and division where it belongs; 4. It would do away with the expense or transfer of causes; 5. It would obviate technicalities, intricacies and pitfalls of appellate procedure; 6. A mistake of venue would not defeat an action; 7. It would obviate conflicts between judges of coordinate jurisdiction; 8. It would allow judges to become specialists in the disposition of particular classes of litigation; 9. It would bring better supervision and control of administrative officers connected with judicial administration."

IS THE PUBLIC FAIR?

Since the Fall-Doheny-Sinclair jury disclosures the cry has gone up everywhere: "Fix the jury system"; "It is warped"; "It is being manhandled"; "Crafty lawyers are debasing it"; "Unscrupulous judges

are defiling it"; "The machinery is so rusty it creaks"; and so forth; each and all generalizations against the legal fraternity from a specific incident, which no one condones, and which appears to be chargeable to individual human weakness rather than to any group or system.

Why should men overlook these facts: That the Judge, who presides at a trial, is human; that the men and women, who compose the jury, are human; that the lawyers, who present the facts and the law, are human; that the men and women, who compose the public and watch every important trial, are human; and that the witnesses, who tell the story as it appeared to each of them, are human; that the Judge, the jury, the lawyers, the public, and the witnesses, all have some influence upon the ultimate result reached in any trial; and that, because all are human, and none infallible, no particular element in the chain of influence is properly chargeable with full responsibility for a specific incident, which might occur even if there were no "deplorable general condition."

Now, lawyers can and do promulgate codes of ethics for themselves. These codes lay down the fundamental principle that the lawyer is an officer of the Court, and that his first duty is to get at the truth. But does the public recognize the practitioner for the number of times he finds the truth, or for the number of lawsuits he wins? Do the parties concerned in a criminal action always present the attorney with a complete picture of the situation, or do they frequently give him the BEST picture of ONE side of the case? Do jurors analyze ALL of the evidence, and heed ALL of the instructions of the Court, or do they occasionally pick and choose, according to the knowledge, training and experience of the individual, and then compromise to get a general result? May not each and all, including the public, be thoroughly honest, upright, capable and conscientious in doing what they do, and yet the result be an occasional miscarriage of justice?

It may seem strange that the public, in its consideration of the legal profession, reverses its usual attitude of fairness, and even seeks to hold the group responsible for every single act that may appear to be unexplainable to a lay mind. A specific incident, involving no violation of any moral, legal or ethical code, is frequently found sufficient warrant for a general charge such as this: "That lawyers deliberately fill jury boxes with the worst material available." But the mere fact that the public is unfair in its attitude, and refuses, even, to give reasonable consideration to corrective legislation proposed by Bar Associations, does not justify the Bar in disregarding the public. It should all the more strenuously seek, by conduct and example, to remove suspicion. It should utilize every available means for educating the public as to the aims, ideals and purposes of the profession. It should design and exercise more strict disciplinary control over those who occasionally throw suspicion upon ALL by disgracing THEMSELVES.

ADMINISTERING LEGISLATION

Chapter 286 of the Session Laws for 1927 was a much argued measure. A majority of the Compensation Bureau vigorously opposed it. It passed, however, and became law.

During the discussions in the Legislature the view that seemed to be most generally accepted was that the sole intent and purpose of