

It is disgraceful to a great profession that this should be so. I venture to suggest that if the law schools would approach the organization of the courts, the recruitment of judges, the selection of jurors, the search for truth in trials and appeals, the expedition as well as the individualization of litigation, not from the standpoint of what *is* but from the standpoint of what *ought* to be, a generation of enlightened students would soon be trained who would do for the courts what the bar should long since have done.

Charles E. Clark*

Morris Ernst's paper is vastly stimulating and commands wide, though not complete, agreement from me. I share his general feeling of pessimism, for I think the legal profession has failed in leadership where most needed. It has been depressing to see our country tending more and more to rigid intellectual conformity, to fear of the future and of change, to loss of that tolerance for individualism and deviation from the norm which has contributed so much to our country's greatness. True, the lawyers here have been little different from the rest of the community. But that is just the reason for despondency. For they should have provided the leaders who could bring us back to reality, as did a Holmes or a Hughes in past crises. Now we have longed in vain for clear voices among our greats of the bar to force renewed recognition of the truly precious heritage we have in the Bill of Rights.

But on other levels I think there has been gain. Although courtroom performance has deteriorated, it is my impression that law office practice, as it has become more complex and more sophisticated, has become also more technically skillful and adept. Naturally as a judge I regret that the leaders of the bar tend no longer to appear in courtrooms such as mine; but I recognize the economic trends which compel this result, and am not disposed to fight against what seems to be economic progress. And in a correlative aspect of technical proficiency and creative effort, that of professional concern for improvement in law administration and the processes of justice, I am sure that there has been a decided change and a change for the better. Here is where I part company with Mr. Ernst, who tends to decry, if not belittle, these aspects of good professional accomplishment.

Time was not so long ago, and in England at that, that reform in the courts and in their procedure had to be sparked by laymen; the famous hundred years' battle for procedural reform in the English courts was lay inspired and lay led. Now we have pretty much gotten away from this; law-

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yers and judges are showing the way for court integration and simplified procedure. It is still probably true that a poll would show more practitioners allergic to court reform than for it. But one effective leader outweighs many negative followers; and now the stimulus, as well as the expert development, is professional. It is producing results. The movement for court reorganization and integration is still in its infancy, although some substantial results have occurred or are occurring. Simplified procedure is however becoming reasonably general. But these are efforts still capable of withering away if discouraged by liberal thinkers; and consequently I am somewhat disturbed by Mr. Ernst's denigrating comments. Even his hearty approval of discovery proceedings worries me. Though I have worked for the extension of discovery, it is but as a component part of a comprehensive plan for simple pleading and speedy uncovering of the merits in issue between litigants. I hate to see it singled out and perhaps overemphasized as a sort of trick gadget to confound the enemy.

Perhaps the question of jury trial affords the best illustration for my thought. I would here stress for special praise the need "to come to grips with the delays and costs of the jury system" did I not realize—partly from his other writings—that he expects and looks for support of the existing system, with perhaps an added gadget or two tending toward increased awards. Certainly I do not find a call for that scientific exploration and unbiased study of this most overwhelming feature of modern trials which the importance of the subject and the present needs of the automobile age in my judgment require. I suggest that nothing is more illustrative of the present-day anti-intellectualism I have deplored than the recent hue and cry against carefully controlled university and judicial studies of that venerable institution—just as though that part of our court system most requiring study and indeed most likely to be rehabilitated thereby is quite untouchable, too sacred for even scholarly hands. I do hope, for my part, that Mr. Ernst can be induced to cherish and foster these good elements in our profession, for we do need them.

There are other fine things in what he says, such as that judges talk too much, even though goaded thereto by lawyers. But I do not need to stress points of agreement.

Julius Cohen*

Looking backward is not only the subject of a utopian romance, it is a description of a quality of mind that has come to be associated with the study and practice of law—a sort of badge of the profession. Though Bellamy's backward glance was from a vantage point imaginatively projected beyond the immediate, it is not surprising to find the more prosaic, tradition-

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