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Terence J. McManus

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COOPERATION BETWEEN PRESS AND BAR

A DESIDERATUM

FROM the time when "the memory of man runneth not to the contrary," the legal profession has suffered from a prejudice, intense in its malignity and almost universal in its scope.

A significant manifestation of this prejudice is the inscription on the tomb of that outstanding legal luminary of the thirteenth century, St. Yves—the patron saint of the bar. It reads:

"He was a lawyer, yet not a rascal, and the people were astonished."

And when in 1450 the English rebel, Jack Cade, harangued his followers on Black Heath, he vowed that:

"There shall be in England seven half-penny loaves sold for a penny; the three-hooped pot shall have ten hoops, and I will make it felony to drink small beer; * * * and when I am King, as King I will be, there shall be no money. All shall eat and drink on my score, and I will apparel them all in one livery, that they may agree like brothers, and worship me, their Lord."

One of his followers manifestly regarded these promises of reform as not sufficiently inclusive. He urged that:

"The first thing we do, let's kill all the lawyers."

Whereupon, Jack responded:

"Nay, that I mean to do."

Our own country has not been without evidence of this hostility to the legal profession. Note the action of the town meeting at Braintree, Massachusetts, immediately following the Revolution, where delegates to the State Assembly at Boston were instructed "to take some measure to

prevent the growing power of attorneys and barristers at law, and that the Court of Common Pleas and the General Sessions of the Peace be removed in perpetuation. And that there be such laws compiled as may crush or at least put a proper check or restraint on that order of gentlemen denominated lawyers whose conduct appears to us to tend rather to the destruction than the preservation of this Commonwealth." Lawyers of that day could find some consolation, however, in the circumstance that they were still classified as gentlemen.

The lawyer of this day and generation is witness to the fact that this spirit of antagonism and distrust has not been allayed in the smallest measure. Indeed, it appears to have grown in rigor and intensity.

The only departure from the old antagonism is in the character of the medium through which it is fostered and maintained. In ancient days it was in public meetings that hostility was usually voiced. In this era, the press is the instrument. Day in and day out we are met with articles challenging the efficiency of the bar, characterizing its methods as archaic, denouncing the profession as lacking in public spirit, maintaining, indeed, that many of the ills that the body politic is heir to, are attributable to neglect by the bar in the fulfillment of its obligation as quasi-public servants.

In news articles and editorial columns, whenever justice from the viewpoint of the press has failed, it is the lawyer who has to bear the brunt of criticism, justifiable or unjustifiable, as the particular situation would seem to warrant.

It is even proclaimed that much that is archaic in judicial procedure has been nurtured and retained by lawyers for their own selfish ends. The fact that, within recent years, the bar has initiated more earnest, more intensive and more comprehensive efforts to effect improvement in the administration of justice than has any other human agency, is wholly ignored.

An outstanding example of commendable purpose in the field of reform is the creation of the American Law Institute, which was organized in 1923 at Washington, D. C., under the auspices of the late Chief Justice William Howard Taft of the Supreme Court of the United States, and then Chief

Judge Benjamin N. Cardozo of the New York Court of Appeals (now Associate Judge of the Supreme Court) in company with a group of distinguished leaders of the bar from all parts of the country.

Under this inspiring leadership, the American Law Institute has undertaken a task of monumental proportions, namely, restating the common law and reducing to simple terms, the inconsistencies and technicalities which have so long brought reproach upon the practice of the law and the administration of justice in this country. The undertaking is being carried on under most distinguished auspices, and the country at large will reap the benefit which is sure to follow the completion of the task.

This, however, is but one of many manifestations of the high purpose with which the bar of this day is animated. In every department of the law, in every field of professional activity, conditions are being studied, remedies are being considered and examined with painstaking care and reforms of broad significance and great utility are in the making.

Another example of this high purpose is disclosed in the National Bar Program inaugurated by the American Bar Association at the annual meeting of the Association held at Grand Rapids, Michigan, in 1933. The plan provided for coordination of the activities of the 1,430 local and state bar associations in the country in a study of four subjects of outstanding importance, namely:

Criminal Law and Its Enforcement
Legal Education and Admission to the Bar
Unauthorized Practice of the Law
Selection of Judges

This program at once met with enthusiastic support and cooperation upon the part of the bar associations, as is disclosed in the report of the proceedings at the annual meeting of the American Bar Association held in Milwaukee in August last.

The subject of prime importance in this program, namely, Criminal Law and Its Enforcement, received the widest measure of attention, and properly so. All reputable

members of the legal profession recognize that the amelioration of the evils and deficiencies in the administration of justice in our Criminal Courts is the most serious problem with which the bar is confronted. Many reports upon that subject were considered, one of the most noteworthy of which was that submitted by the Committee on Criminal Courts and Procedure of the New York County Lawyers' Association.

This report, covering 166 printed pages, in the matter of scope, research, analysis and recommendation, was a most useful, indeed an extraordinary document.

It presented a study of many of the processes under which criminal justice is administered; it proposed reforms designed to promote speedy trials, and recommended the abolition of many of the archaic rules which have brought the practice of criminal law into contempt and obloquy.

Indeed, its usefulness and timeliness were so manifest that the American Bar Association requested that it be furnished with one thousand copies for distribution among bar associations and other agencies interested in the study of reform in criminal procedure in state and nation.

If space permitted, many other manifestations of activity in the proposal and consideration of reforms in the administration of justice could be pointed out. It will suffice to say that they demonstrate most convincingly that the bar has a complete realization of the necessity for reform and a firm purpose to achieve it.

But the bar cannot, alone and unaided, bring about reform. The most powerful agency among American institutions—the press—must cooperate in this behalf.

Before discussing the subject of cooperation, it is well to observe that there is room, too, for improvement in newspaper methods. There are practices in that field which should be altered, even abolished.

Indeed, the press should approach the subject of cooperation from a sympathetic viewpoint. It, too, has had to run the gamut of criticism and prejudice. Its practice of absorbing the functions of court and jury has frequently been challenged during the period of our governmental existence.

To cite a few instances:

Benjamin Franklin describes the press of his day as "The Supreme Court of Judicature, which may judge, sentence and condemn to infamy not only private individuals but public bodies, etc., with or without hearing at the court's discretion."

Again he characterized it as the "Spanish Court of Inquisition working in the dark and so rapidly, that an honest, good citizen may find himself suddenly and unexpectedly accused and in the same morning judged and condemned and sentence pronounced against him that he is a rogue and a villain."

And the great John Marshal, on one occasion, expressed his sentiments in the following terms:

"Among those principles deemed sacred in America, there is no one more deeply impressed on the public mind than the liberty of the press. That this liberty is often carried to excess, that it has some times degenerated into licentiousness, is seen and lamented."

Noah Webster, writing in 1800, said:

"No government can be durable under the licentiousness of the press which now disgraces our country."

In our own time, the practice of "trial by newspaper" was denounced by a Chief Justice of the United States as an unmitigated evil. Chief Justice William H. Taft, addressing the New York Constitutional Convention in assembly at Albany in the year 1915, made this comment:

"I don't see anything that can mitigate this evil of trial by newspapers. I don't see why in making this new constitution you cannot do something to protect the administration of justice, even if it should involve a modification of the freedom of the press, and permit

the Legislature to pass reasonable laws along the lines that I have suggested. * * *

“To protect the defendant against one of the greatest evils—perhaps the most vicious one arising in connection with criminal cases—trial by newspapers. In many instances the defendant is convicted in newspapers ahead of time, and the judge has the greatest difficulty in handling the case because of the atmosphere by which it has been surrounded through such newspaper publications.”

Whether we regard these criticisms as justifiable or not, is not debatable here. “We are confronted,” as the great Grover Cleveland said, “with a condition, not a theory.” The administration of justice in our criminal courts is sadly in need of improvement.

Concrete proposals for the amelioration of many of the evils which now obtain, are presented in the report of the Committee on Criminal Courts and Procedure of the New York County Lawyers' Association, to which report reference has heretofore been made. They provide, among other things, for :

- (a) the right of a defendant in a criminal case to waive trial by jury;
- (b) provision for less than unanimous verdict;
- (c) provision for the selection of jurors by trial judges, subject to the right of the defendant to suggest courses of inquiry to be pursued by the court;
- (d) right of defendant to waive indictment in certain classes of cases;
- (e) granting rule-making power to the courts;
- (f) granting a right to the prosecutor to comment on the failure of a defendant to take the stand;
- (g) giving power to the trial court to comment on the evidence;

- (h) requiring defendant to give notice of intention to offer a defense of alibi or insanity.

There are other remedies proposed in this most useful document, but the enumeration of the foregoing demonstrates that if they were enacted into law, they would not only insure the "speeding up" of criminal trials, but would abolish many of the archaic practices which have served to restrict and handicap the prosecution of crime in our criminal courts.

What is needed is the creation of a public opinion in support of these measures, which would overwhelm the opposition which any group, or groups of short-sighted, narrow-visioned lawyers could engender.

If the press will join with the bar in the creation of a public demand that measures such as have been herein suggested, be enacted, the cause of justice will be materially advanced. The bar is doing its part. Will the press cooperate?

TERENCE J. McMANUS.

New York City,
November 13, 1934.