A Circular Letter

Concerning the

Administration of Justice

By

Herbert Harley

"I insist that notwithstanding the just many decisions rendered by our courts, when we consider the prevalent delay, the unnecessary expenditure of time and effort and money, the hindrance of just rights through long-continued defensive litigation without substantial merit, the litigants who abandon their pursuit of justice through weariness or lack of means, the citizens who abandon their rights rather than incur the annoying and injurious incidents of litigation in the effort to enforce them, the emboldening of the unscrupulous in whose hands delay and difficulty and expense of litigation are weapons with which to force compromise without just grounds—when we consider all these incidents of our present condition we are bound to say that the general interests of the administration of the law require a thorough and radical change.

"The situation cannot be met by merely increasing the judicial force. We have often tried that expedient, but always ineffectually. The only real remedy is to be found in reforming the system."

ELIHU ROOT.

"The situation in this country in our judicial procedure is the more intolerable, and indeed indefensible, when we consider that it is now recognized by the students of historical jurisprudence that extreme technicality is the sign of an undeveloped system of law, in which legal rights are subordinate to the procedure to enforce them, wherein the substance is secondary to the form.

" * * * * * * while we cannot give our judges the deference and prestige which is due to inherited social conditions, we *can* secure a judicial independence, even in an elective judiciary, which will rest upon a more enduring basis—the conviction of an enlightened self-governed people that prompt efficient administration of justice cannot be secured except through the wide judicial discretion of an independent judiciary. We cannot secure judicial reform through the enactment of a sovereign parliament, effective throughout the country, but the complex machinery of our government delays only the whim, and not the will, of the people. The true philosophy of our governmental system is that it only insures that sober second thought of all the people, which is essential to all true and enduring reform in human progress."

FREDERIC N. JUDSON.

"Mere continued complaint, confined as it is to newspaper and magazine discussion, and to an occasional bar association address, will result in nothing but aggravation of the growing contempt for the whole institution of law and its enforcement, which if not abated by intelligent and scientific reform will inevitably bring disaster to our whole social and political fabric. The evils in our substantive law, that law which is the crystallization of the customs and the aspirations of the people, they, the people, have the power to correct. But the evils in the administrative law, in the judicial machinery and legal procedure the legal profession, lawyers and judges alike, must reform.

" * * * * * * by the dedication of our talents to the welfare of the people, in so far at least as the administration of law affects it, we shall help to restore the legal profession to its traditional place of nobility and dignity. * * * * * That the legal profession may regain its ancient place of equal nobility with the ministry and the medical profession, lawyers must demonstrate that, above employment to private interests for mere pecuniary gain, they also value and cherish the ideal of serviceableness to mankind. Law is a means and not an end. And the end is not the development of a game for the intellectual delectation of judges and lawyers, nor is it that lawyers shall by their wits be able to serve the greed and tyranny of a favored few, but the end of law is that justice and righteousness shall prevail in order that we may realize, in these United States, the ideal of a true democracy."

EMANUEL M. GROSSMAN.

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A Circular Letter Concerning the Administration of Justice

MANISTEE, MICH., Oct. 7, 1912.

This "Circular Letter Concerning the Administration of Justice" is sent to those whose names appear on foregoing pages in the belief that their replies will afford a body of opinion and counsel of substantial worth at a time when the subject is attracting widespread attention throughout the land.

The author last year received a commission from a client to make a deliberate and thorough survey of the administration of justice in the United States with particular reference to existing means or opportunities for improvement.

This letter is intended to supplement personal interviews which were necessarily brief and inconclusive. It is hoped that recipients will reply, stating their opinions concerning conclusions contained herein, and criticising certain proposals for organized effort. The addressees are so truly representative of the legal profession that I believe their replies, in so far as they shall be in substantial agreement, may be taken as the response of the entire bar to the project here outlined.

The writer has not construed his commission as a mere "quest for error" but seeks instead for positive information looking toward a readjustment on a scientific basis of our entire remedial law.

It is inconceivable that there should be a time free from complaint concerning the administration of law. Certainly there has been no time in the history of Anglo-American jurisprudence when there has not been criticism. But within the last decade there has developed such definite and pointed caviling and today there is so much discontent in this country that it is now especially timely to engage in research looking toward affirmative relief.

It is not intended here to publish a catalogue of shortcomings but to briefly review the situation, marshal certain facts which inspire hope, and offer tentatively a project for improvement involving leadership by the American bar.

State systems for the administration of justice have become less and less homogeneous during the past century. Popular jealousy of power in any government department was expressed by

resort to the elective judiciary in new states and territories following the organization of Ohio and the intended reform back fired into a majority of the seaboard states. Thus arose the first great division in methods and personnel. The second came with the abandonment of common law procedure by New York in 1848 and the imitation subsequently of New York's action until twenty-seven states now classify as code states, and five others, gone half way on the road of explicit reform, are best described as quasi-code states. In the remaining states excepting Louisiana there is much variation in the extent to which common law procedure has been modified.

The latest disjunction in spirit and form of the judicial system arises from the extension of the judicial recall in certain western states and the possibility that this mistaken doctrine may spread widely before its fallacy is realized by the electorate.

REASONS FOR DISCONTENT

Just as there has always been discontent concerning our courts so there has always been more or less effort on the part of individual lawyers and associations of the bar to adjust matters and obviate criticism. The growing instinct for reform has been appreciably influenced and stimulated along scientific lines by a masterful analysis of the situation presented in "The Causes of Popular Dissatisfaction With the Administration of Justice," an address delivered by Roscoe Pound before the American Bar Association August 29, 1906 and published in the American Law Review for September-October, 1906.

In this paper the reasons for discontent are discussed under four main heads:

(1) Causes for dissatisfaction with any legal system.

(2) Causes lying in the peculiarities of our Anglo-American legal system.

(3) Causes lying in our American judicial organization and procedure.

(4) Causes lying in the environment of our judicial administration.

The causes for dissatisfaction with any system of law are declared to be the following: (1) the necessarily mechanical operation of rules, and hence of laws, (2) the inevitable difference in rate of progress between law and public opinion, (3) the general popular assumption that the administration of justice is an easy task, to which anyone is competent, and (4) popular impatience of restraint.

Before passing from these universal reasons for discontent I would especially emphasize the second—"the inevitable difference in rate of progress between law and public opinion." Our present swift transition in social ideals and industrial habits, with much slipshod legislation, has made that difference more acute than ever

before. And while this cause will inevitably persist it can be appreciably reduced by taking thought thereunto and engaging in conscious definite readjustment to the needs of a new order.

Again quoting Roscoe Pound: "Under the second main head, causes lying in our peculiar legal system, I should enumerate five: (1) the individualist spirit of our common law, which agrees ill with a collectivist age; (2) the common law doctrine of contentious procedure, which turns litigation into a game; (3) political jealousy due to the strain put upon our legal system by the doctrine of the supremacy of law; (4) the lack of general ideas or legal philosophy, so characteristic of Anglo-American law, which gives us petty tinkering where comprehensive reform is needed; (5) defects of form due to the circumstance that the bulk of our legal system is still case law."

I submit that the foregoing must be classified as incurable ills, or ineffaceable characteristics, as you please, except that we may beneficially modify our doctrine of contentious procedure by increasing the discretion and responsibility of the court and thus relatively decreasing the importance of advocacy. A trend in this direction appears inevitable. The pendulum cannot conceivably swing further in the direction which puts litigation on a par with sporting events. It must begin to return before long.

"Passing to the third head," continues Pound, "causes lying in our judicial organization and procedure, we come upon the most efficient causes of dissatisfaction with the present administration of justice in America. For I venture to say that our system of courts is archaic and our procedure behind the times. Uncertainty, delay, and expense, and above all the injustice of deciding cases upon points of practice, which are the mere etiquette of justice, direct results of the organization of our courts and the backwardness of our procedure, have created a deep seated desire to keep out of court, right or wrong, on the part of every sensible business man in the community.

"Our system of courts is archaic in three respects: (1) in its multiplicity of courts, (2) in preserving concurrent jurisdictions, (3) in the waste of judicial power which it involves. * * * * * * *

"Finally, under the fourth and last head, causes lying in the environment of our judicial administration, we may distinguish six: (1) popular lack of interest in justice, which makes jury service a bore and the vindication of right and law secondary to the trouble and expense involved, (2) the strain put upon law in that it has today to do the work of morals also, (3) the effect of transition to a period of legislation, (4) the putting of our courts into politics, (5) the making the legal profession into a trade, and (6) public ignorance of the real workings of courts due to ignorant and sensational reports in the press."

This scientific analysis of conditions and the forceful arguments adduced by the author in support of each subdivision might incline a reader to a pessimistic view, so before passing from quotation marks please notice that Pound concludes with these words:

"With law schools that are rivalling the achievements of Bologna and of Bourges to promote scientific study of the law, with active bar associations in every state to revive professional feeling and throw off the yoke of commercialism, with the passing of the doctrine that politics too is a mere game to be played for its own sake, we may look forward confidently to deliverance from the sporting theory of justice; we may look forward to a near future when our courts will be swift and certain agents of justice, whose decisions will be acquiesced in and respected by all."

Dr. Pound does not undertake in this analysis to distinguish the inevitable causes for dissatisfaction with the administration of justice from those which are transitory. True not all of the causes can be dogmatically classified as curable or incurable. But "in our judicial organization and procedure" he finds "the most efficient causes of dissatisfaction with the present administration of justice in America." Here appear the numerous and evident faults arising from the administrative side of the judicial function and here is given promise for the largest gains from effectual concerted effort for improvement.

PRESENT LACK OF AGREEMENT

A phenomenon deserving consideration is the extraordinary differences of opinion among representative lawyers concerning present faults and projected remedies. Some stress the political faults; some place most of the blame on procedure; a growing element blames our inflexible court organizations; one hears the bar, the bench, and the electorate censured in turn; while occasionally a lawyer is found with more historical perspective than the majority and a broader grasp of present conditions, who sees that no one source explains all, that our condition is the evolutionary outgrowth of a thousand causes, and accordingly there can be no single remedy and no catchword can embrace the entire theory of reform.

This disagreement between lawyers who feel their responsibility to the future, more conspicuous in most states than any other phase of the profession's attitude on this question, I attribute to the fact that the entire matter of faults and remedies in the administration of law is mainly at this time a local question.

The various states present wide divergences in the fundamental theories of conducting an action at law and in points of practice it would be difficult to conceive of greater heterogeneity among integral portions of a single nation.

Another great difference arises from the varying demands and facilities in rural and metropolitan conditions. Our great centers of population have arisen without conscious adaptation under a system created originally for a rural district and a stage coach age. It must be conceded that a considerable share of the dissatisfaction arises from the breaking down of our judicial system under the stress imposed upon it by municipal politics, civic indifference, and big business, causes peculiar to metropolitan life.

So long as we do not differentiate between a court adapted to a large city and one adapted to the rural circuit, the present clamorous disagreement as to needed changes will persist. Personally I incline to the opinion, after long observation, that our rural courts would be found quite as much in arrears from the standpoint of administrative efficiency if held to as high a standard as we employ in guaging city courts.

Emphasizing the essentially local character of the qeustion it should be said also that in some localities the administration of justice is on a far higher plane than any other governmental function, and so not specially subject to criticism at present, while in other parts of the country court methods and results deserve emphetic condemnation.

The judges themselves must come in for a share of the blame but it is a notable fact that practically everywhere the personnel of the bench is in advance of that in co-ordinate branches of the public service. The typical judge is far closer to the ideal than the typical legislator or the typical officeholder of a ministerial character. This is an inspiring fact in view of the meager salaries generally paid to judges. It shows that the honor attaching to a responsible public service goes far to engage a man's best talents.

And whereas the administration of justice is comparatively good in some few states, and decidedly bad in a few others, in between are all shades of gradation. In most states the good and bad practices are woven into a fabric so indeterminate in character that it is sharply criticised and warmly defended at the same time and by men of equal sincerity.

ABSOLUTE UNIFORMITY IMPOSSIBLE

It is inconceivable that we should ever have a perfectly uniform system of selecting judges in all the states of the Union, or that all should be invested with equal powers and given equal compensation. Nor is it conceivable that we should ever have one uniform and unvarying procedure for all state and federal courts. There will always be dissimilarity of needs, arising from sectional differences, if only those of tradition, climate and physiography, to forbid the realization of such a dream.

The person who postulates an ideal and uniform system of procedure must assume that it could not be amended for one locality without making the amendment effective universally. If one can imagine such a system adopted voluntarily by all the states, the development of it to meet future needs would be wholly lacking. It would perforce be so rigid that the end would mean greater confusion than now prevails. As well designate by law a standard size shoe for every person to wear.

It is nevertheless true that the principles involved in the organization and operation of courts are identical in all states. A political principle operating in one state to make the judiciary independent will so operate in any other state, for such a principle is derived from and built upon human nature, practically the same in all states.

An organization framed to inspire administrative efficiency in one court will confer like benefits wherever the same social problems are presented.

The study of the remedial law divides naturally into four parts:

(1) The judges; their manner of selection, compensation, tenure, administrative and judicial powers.

(2) The bar; its requirements for admission, ethics and scope of advocacy.

(3) The organization of courts.

(4) Procedure, comprising pleadings and practice.

THE JUDICIARY

The first division, the judiciary itself, is in many respects the most difficult, not because it is inherently occult, but because of the present temper of the people and because substantial reform may imply education of a majority of the electorate or their representatives.

The question of an elective or appointive judiciary is not one to be settled in any casual treatise. We may never settle it absolutely. We should first distinguish between the appointive judiciary and the long tenure ordinarily coupled with it. There is some reason for holding that the security and independence of the life tenure confers a greater benefit than selection by appointment. When in most of of our states the bench was democratized the elective office and short term went hand in hand. Each abetted the other in weakening judicial independence. A remedy prescribed to bring justice close to the people has finally made justice almost prohibitively expensive. Now come forward the same type of emotional and unscientific reformers with the recall, a stiffer dose of the same medicine.

Very brief experience with the judicial recall in Pacific states is leading to the hope that it will afford an easy transition to a long

tenure of office, originating possibly by appointment, and determinable by a popular vote under such exacting requirements as to exclude the peril attaching to it in its present form.

The ready adoption of specious remedies at this time indicates clearly that we are in a formative period offering a rare opportunity to the thoughtful as well as to the emotional. It should not be hopeless to oppose folly with sense or to expect to regain lost ground. If the judicial recall is as vicious as we believe it to be there will be in its wake a fair field for genuine constructive reform.

With the elective judiciary politics entered the forum. In a few instances it has resulted in frank corruption and generally it has operated to lessen judicial independence. Legislatures have encroached by absorbing rule making powers, depriving courts of autonomous control. The office has been made unattractive quite generally by keeping judicial compensation at the level of a comparatively primitive age.

When one considers the cumulative effect of these causes it is indeed surprising that our judges deserve the high standing accorded them in many localities. It indicates a tremendous though imponderable force underlying this branch of social service, evoking willing sacrifice in return for immaterial reward. Throughout this entire study one finds inspiring proofs of good tendencies as abundant as current evidence of grave disorders. The plants will grow when the weeds are destroyed.

THE LAWYERS

The American bar represents at this time an evolution still incomplete but distinctly encouraging. Up to 1870 the bar was the guiding element of the nation. The period of industrial and commercial expansion which followed affected the profession adversely in two principal ways. Business took from the public service the more capable and ambitious lawyers. Its rewards were so startlingly large that, under the lax rules for admission, a great number of uninspired and unfit applicants were attracted to the profession as the likeliest field for a man with commercial instinct but no capital. A considerable number of these unfit members, far in excess of the public's need, remain like a sordid fringe to the judicial garment, and with those deemed to have sold their talents to corporations with interests hostile to the public welfare, give color to the entire profession.

But here also the times contain the seeds of better things. During the past decade there has been a renaissance in law teaching. The schools are rapidly infusing the profession with men who will uphold its most honorable traditions. Requirements for admission are being raised so that before long there will be few lawyers not

thoroughly schooled. In this field a new national instinct is overcoming our old faith in democracy as a panacea. Our fathers insisted h at every man should have the right to practice law, asserting an individualistic view. We incline toward newly discovered collective rights and for the good of the entire people hold in check the few who cannot bring to the profession sufficient means to promise adequate preparation.

Three years ago the American Bar Association adopted a code of ethics. A number of state associations have followed suit. Already earnest is given that the code of ethics is not merely an expression of sentiment. In New York City especially a purging process is under way, lawyers not measuring up to the profession's standard of conduct being summarily cast out.

COURT ORGANIZATION

Our distribution of jurisdiction between justices of the peace, district or circuit judges and appellate judges is evidence of a fundamental doctrine which is wholly fallacious. It assumes that no expertness is necessary or available for litigation involving lesser crimes or small claims. It assumes a certain excellence for trial judges and a super-excellence for courts of review. It creates a caste system. The Brahmin of the supreme court must not soil his hands by performing the service reserved to the nisi prius judge, that of ascertaining the intrinsic justice of the judgment. His caste limits him largely to passing on the technical conduct of the judge of less degree.

With small scope for directing litigation the trial judge balances between the two champions of our contentious system knowing it would prove hard to escape the censure of the supreme court if counsel were endeavoring to smooth his pathway, instead of being engaged in an effort to inject error.

Judges do not even choose their own clerks, masters or bailiffs. At their peril they construe tedious and conflicting acts regulating practice to a minute degree, but have no voice in their making. In most jurisdictions the judge must perforce expend much of his energy in keeping his feet out of the multitudinous pitfalls.

Our typical state system of courts originated in a primitive state of society. The further we get from that primitive condition the more unfit the organization appears. Its form from the standpoint of administrative efficiency is most unfortunate. There is a growing demand for a unification of judicial power. It should be impossible to apply to the wrong tribunal. Courts for special purposes within a state should be but branches of a single court.

The efficiency of single units and the probability of sound decisions would both be tremendously enhanced by a closely knit organization having a single head for administrative control.

It is a serious reproach that ours is the only civilized nation which does not require of its courts full reports on the administrative side. Every other department files its statistics and most of them are published annually. Full data, now to be obtained only at great expense, would go far to throw light on questions of court organization and procedure.

We need a study of English court organization from the American point of view. We cannot bodily transplant the English system because of difference in social structure but the principles of concentrated power, autonomy and responsibility, all making for efficiency, can be adopted as part return for the service our reform movement of 1848 rendered England and her dependencies in ridding themselves of the shackles of common law procedure.

AN EFFICIENT COURT

An intimate realization of the principles involved in efficient administration is afforded by the Chicago Municipal court. Especial interest attaches to this court by reason of its success in the disciplining of judges by their colleagues. This may be the germ of an idea which by general adoption would stay the spread of the recall, supplant ineffective impeachment, and permit of extending the average tenure of office.

This court makes its own rules. It has created an original procedure with pleadings ideally simple and practice which tends to eliminate at an early stage all litigation not meriting elaborate treatment. It is located in a state in which the common law procedure is said to compare favorably with that of Elizabeth's reign but it has become in six years the greatest court in the land and a very beacon light of encouragement to those who believe that the genius of the American people and the pride of their bar will not forever lag behind the highest ideals.

PROCEDURE

The matter of procedure I believe to be least of the four divisions of the adjective law but the contention concerning it all but drowns out consideration of more vital matters. Every lawyer feels qualified to discuss procedure. The greatest fallacy which exists in this field, to my way of thinking, arises from consideration of a single rule or step in procedure by itself. It is highly unscientific to consider any step in procedure aside from is relation to what precedes and what follows it. A rule is good or bad, useful or detrimental, according as it fits more or less profitably into a general line of practice which

is itself the most direct and profitable. But who shall say concerning the "general line of practice"? Whose single experience qualifies?

In the wilderness of procedure certain main roads have been blazed. It has been established that a single form of action suffices in protecting and enforcing private rights.

Codes and practice acts whould be brief and general in their terms, leaving details to be fixed by rules of court.

A distinction should be made between rules intended for the orderly disposition of business and those intended to secure for all parties a fair opportunity to make or meet the case. Reversals should never be founded on the former class of rules and nothing should depend upon or be obtainable from the latter except the securing of such fair opportunity.

Transfer instead of dismissal should be the consequence of bringing a suit in the wrong court.

The equitable principle of complete disposition of the entire controversy should be extended to every type of proceeding.

All questions of fact should be disposed of finally upon one trial unless new and material evidence be discovered.

An appeal should be treated as a motion for a rehearing or new trial or modification of judgment before the reviewing tribunal.

The sole office of pleadings should be to give notice to each party of the demand or cross-demand asserted by his adversary.

Not all of my readers would give assent unqualifiedly to all of these canons but I believe that a majority would accept them or all would accept a majority of them. But it yet remains to build them into the structure of our American court procedure.

Somewhere in this broad land almost every conceivable kind of practice is or has been in vogue. We have states taking a three-fourths vote of the jury as conclusive except in capital cases. In one state eight constitute a full jury and for ordinary cases unanimity is not required. We have courts in which the common law practice of commenting upon the evidence still obtains as a judicial duty. We have courts in which pleadings must be verified under the penalties for perjury.

Sixty-four years have elapsed since the entry of positivism into the domain of legal procedure. More than half the states of the Union have been experiment stations during that period. For nearly forty years England has administered justice in accord with the demands of modern life. If any reader disagrees let him at least admit that it is significant that courts and law are highly respected in Great Britain and the colonies and no such unrest is observable there as in our own country.

So we have today a wealth of experience to draw upon but having yet no authentic and accredited agency for scientific research and the dissemination of sound principles, we appear likely to plunge into a sea of reconstruction. Up to the present time revision has been almost exclusively by legislative commission. Almost invariably time has been limited. There has been a strong disposition to borrow procedure in the gross and let the courts adapt it if they could. Concessions have been made to the desire for prompt passage of revision acts. Bar associations have frequently endeavored to aid but for the most part their work has not availed much. Over the whole business is the smear of the amateur. Many of the men who have taken part as commissioners or members of bar association committees could have acquitted themselves fairly well if free to throw aside all other duties for a sufficient period and then assured of acquiescence by legislative power.

Turning to the brighter side we find men better qualified than ever before to assume an authoritative position in the immense amount of research work which should be done if we are to better the situation as well as merely alter it.

We also find quite generally a disposition on the part of representative lawyers to view the present time as one specially suited to readjustment, one calling for concerted action that threatened evils may be averted and potential benefits brought nearer.

I submit that the right approach to the matter of energizing and elevating the administration of justice must be on a basis far broader than is afforded any state commission or bar association. It must combine the experiences of many diverse jurisdictions. It must be national in scope even as the work itself is national.

It must compass three lines of endeavor: research, information. of the entire bar, and direct application of accepted reforms.

An organization intended to perform a scientific work should itself be scientifically formed; that is, it should be so formed as to permit of the utilization of every available agency in terms of its highest efficiency. It should employ genius for research and talent for organization. It should bring about a reaction between academic and practical minds. It should employ a nucleus of experts who would engage meanwhile in no other work. It should apportion to its voluntary membership such work of discussion and criticism as can reasonably be expected of men who must regard this work, however dear to them, as an avocation.

Inasmuch as a considerable part of the entire work of inspiring our adjective law with the modern spirit of efficiency and of readjusting it to new political and social needs will be educational there shall be provided an associate membership, embracing all who are interested and disposed to be helpful. While most associate members will be lawyers such membership should not be limited to any class or profession but should be broadly democratic.

The active membership shall be composed of judges, lawyers and law school teachers and shall number not less than one hundred nor more than one hundred and fifty. Such a number should be fairly representative of the entire profession and yet be not unwieldy when gathered in conference. Forty-eight active members shall serve in a representative capacity, each being selected by his state bar association. The remainder shall be selected because of special interest or proved skill in critical and creative work and shall be representative of the bar at large.

There shall be a bureau of research, centrally located, and engaging all of the time of a small group of lawyers of academic training. It shall be their duty to gather data, canvass opinions, and formulate programmes involving ideal forms of organization for courts for various purposes, and procedural rules appropriate thereto.

Active members shall be provided with reports of the work of the bureau prior to meeting in conference where it shall be their duty to discuss, criticise and modify such programmes, applying to them the conservatism and experience of active practitioners.

The executive head shall employ such means as may be available for carrying into effect the recommendations of the bureau as approved by the active membership. The associate membership shall be kept well informed of the progress of the proposals and discussions through a journal or occasional publications and it may be that substantial treatises on various branches of the adjective law may be published for the purpose of spreading correct views. Competent representatives of the organization shall be delegated to present its purposes at the meetings of state bar associations and other appropriate bodies.

The association shall acquaint itself with the conditions involved in the administration of justice in the various states and tender its services in securing concrete enactment of programmes concerning improved procedure, reorganizing of courts, removal of the judiciary from politics, and germane matters.

In view of the fact that there would be a strong personal alliance with the American Bar Association by common membership on the

part of the leaders at least of this movement, and because of the friendly attitude of the parent organization to the subject, it should be possible to secure a measure of representative authority from that body.

It is not proposed that the association should aim to impose a single, inflexible system upon all of the states. It should, on the contrary, investigate all suggested remedies, align them with incontrovertible principles, and serve as a clearing house of experience and ideas to legislatures and commissions.

It would be in order for the association to formulate a plan for a system of state courts and a code of practice and rules of court best suited to the plan. There should also be a plan for a court adapted to metropolitan conditions and appropriate rules. A scheme to supplant the justice of the peace system in counties which are thickly settled and suburban in character should be undertaken. Programmes looking to the removal of the judiciary from partisan politics should be formulated. Where opportunity occurs the need for suitable compensation, retirement pensions, and other features calculated to enhance the attractiveness and independence of the judicial position would be emphasized and encouraged.

In applying ideal programmes of procedure or court organization statutes and even constitutional objections would have to be overcome. In adapting the ideal to actual conditions the highest type of constructive skill would be called into requisition. At this point men of national experience would be of inestimable value to the particular jurisdictions receiving their assistance.

It will be seen then that I project a campaign of the broadest possible character, calculated to afford every locality the benefit of the accumulated wisdom of all, and trending in time toward homogeneity of form.

The only existent organization at all comparable to the one thus projected is the American Institute of Criminal Law and Criminology. There is good reason for specialization on criminal law. I emphatically do not propose to infringe upon the excellent Institute, but believe that at the comparatively narrow ground where its work would merge with that of an organization embracing the entire remedial law, there would be economical and helpful co-operation.

REMEDIAL WORK NOT A PERMANENT ONE

Readers acquainted with the Institute of Criminal Law and Criminology will doubtless contrast its structure with that of the association which I endeavor to present. The Institute is based upon the federation of partially independent state societies. Its work is of a character that cannot postulate any ultimate conclusion. Though the ground may shift there will never be a time when society

will not have on its hands certain human units who fall so far below the normal standard of conduct that they will be classified as criminals.

But to my mind the substantial readjustment and orientation of our remedial legal system, and especially its administrative side, does not imply a permanent occupation. Not so much more study is required for us to know precisely what we want. The spirit of experimentation is rife. It should not be difficult to secure a trial of any rationalistic system. The American people are quick to adopt proven remedies. These considerations incline me to believe that it would amply suffice to project a campaign of not less than fifteen years nor more than twenty years.

In such a period it might be possible to accomplish all that could be desired. At the least enough would be done to obviate most of the justifiable complaints of the present time and to give character to the continuing forces thus set in motion. The regular publication by courts of administrative statistics could be inculcated and it alone would exert for all time a powerful corrective of faults now most insistent.

AN ALTERNATIVE PROPOSAL

It is proper to submit here a proposal of an alternative nature which has come from a lawyer of high academic standing who has endeavored to solve our central problem.

He proposes, instead of a voluntary association, employing certain salaried experts, the founding of a graduate school of law. Such a school should for strong reasons be located at Washington. Besides furnishing higher courses in jurisprudence it would permit of the working out, on the part of its preceptors and pupils, of constructive programmes of law both substantive and remedial. It could become a fountain head of information, informative of the entire bar and especially influential in supplying teachers to the faculties of the lesser law schools. In such an institution, its promoter believes, the work of research involved in my project could be done at less expense than otherwise, because much of it could become a part of the regular work assigned to pupils. Of course such an institution would be permanent and would presumably involve great initial expenditure.

AN ENCOURAGING FACT

The vitality of an idea is often amazing. Six years ago Judge Charles Amidon rode a tilt against the firmly seated doctrine of prejudicial error. The American Bar Association has since urged passage by the Congress of an act requiring that there shall be no reversal for error unless "substantial injustice" shall have resulted.

Such an act could be little more than a declaration of sentiment, for the question of what is "substantial injustice" must be determined by the reviewing tribunal.

The Congress has not yet passed the measure, but the mere declaration of principle is working a silent revolution among the higher courts of the land. Several have taken occasion to affirm the better doctrine and most of the others acquiesce in it so that the reform intended by Judge Amidon will soon be fully accomplished.

I mention this by way of encouragement. Those inclined to be pessimistic, on the one hand, and those who by temperament accept every impulsive suggestion, are alike disqualified to unravel the skein of judicial inefficiency. But those who have faith without over-confidence, skepticism without misanthropy, and a conscious estimate of their obligations to their fellow men can unite in a scientific spirit and erect a great edifice of Truth for the dwelling place of Justice.

RECAPITULATION

In manner and form the administration of justice in this country is widely heterogeneous. The faults of one locality are often not those of another. In some jurisdictions there is comparatively little reason for complaint. In others the defects amount to a virtual breaking down of the judicial machine.

Dissatisfaction appears to be growing more acute and more definite in its charges. At the same time there is observable a growing disposition on the part of the bar to discharge its obligations in this field.

Unless the bar assumes its natural leadership spurious remedies will be adopted generally, making the judicial office less independent and less attractive, and resulting finally in the degradation of our most vital branch of government.

There is no panacea. Diagnosis is all important. When we have correctly ascertained the causes for dissatisfaction we will be able to formulate the appropriate remedy. We have a wealth of experience in the assorting of which scientific methods are needed.

Much statutory change appears imminent. Change, unless clearly designed as part of a comprehensive scheme, is to be deplored.

It is not enough merely to study procedure. Under a scientific organization of courts procedure diminishes in importance. Most significant of all are the methods for selecting judges, their compensation and tenure, and independence of every allegiance save only the law.

An organization representative of the bar should include men of academic and practical training, of constructive and critical talents, jurists, teachers, and practicing lawyers.

The scope of study must be the entire remedial law. The work must embrace extensive research, the accumulation of data, education of the bar and public generally concerning correct principles of judicial administration, and finally positive work to secure the enactment and adoption of recommended reforms in concrete legislation.

For the purposes of this work the national and state bar associations, local bar associations, commercial and credit organizations and all other existing and available agencies should be utilized each for its special effectiveness.

Within a reasonable time the result of such work should be a general acceptance by the bar and the people of the correct principles underlying the administration of justice and an application of them to the end that our juristic organization should attract and suitably reward the high talent it demands, the bar shall have to its credit the rehabilitation of this most vital branch of government, and the entire people shall become infused with respect for law, the only thing which in the long run can be counted upon for the perpetuation of successful self government.

REPLIES ARE SOLICITED

This letter is not written in the expectation that it will embody any considerable part of current ideas on the subject. Even treating the matter in this sketchy form, it is difficult to compress the proposals within a few thousand words. Nor is it intended to persuade my correspondents, but rather to supplement personal interviews and invite replies which will permit me to ascertain what approximation there may be to unanimity on these proposals.

I especially invite proposals offering different schemes, asking each correspondent to put himself for this purpose in my stead and inquire what most effective thing can be done in consideration of all existing conditions and needs.

It is also especially desired that the approximate expenditure involved in the plan I project, or any alternative plan, be estimated. I desire also your opinion as to the possibility of financing such a movement in case there should be no single individual to provide needed funds.

Replies may be directed to me at Chicago, Box 68, or at Manistee, Michigan.

Very sincerely yours,

HERBERT HARLEY.