". . . hoever attentively considers the different departments of power must perceive, that in a government in which they are separated from each other, the judiciary from the nature of its functions, will always be the least dangerous to the political rights of the constitution; because it will be least in capacity to annoy or injure them. The executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary on the contrary has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may be said to have neither Force nor Will, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments."

Hamilton, Federalist No. 78

In a recent issue of the American Bar Association Journal (February, 1972) Professor Millard H. Ruud of the University of Texas School of Law disclosed the extent of the recent growth of law school enrollment and the general increased demand for legal education. According to the article, total enrollment has more than doubled in the past ten years and, perhaps more significantly, demand for legal education, as evidenced by those taking the law school admissions test (LSAT), has increased five-fold over the same period. In the past three years alone, the number of candidates taking the test has increased 45 percent.

The experience at the Marshall-Wythe School of Law is typical of the situation throughout the country. In 1970, the school received a total of 770 applications for 150 positions in the entering class. For the same number of positions in the class entering in September, 1972, we received approximately 2,300 applications, having stopped accepting new applications in mid-February.

—Robert Williamson, in his second year at Marshall Wythe

SOCIAL CHANGE THRU

—Professor R. A. Williamson

To what do we attribute the increased interest in legal education? Professor Ruud suggests a number of factors, including the general increase in the number of college graduates, the larger number of women seeking a legal education, the shortage of employment opportunities for holders of other graduate and professional degrees, and finally, the feeling shared by many young people that law is where the action is and provides a means of working within the "system" for orderly social change.

Although the validity of the reasons for increased interest in the legal profession advanced by Professor Ruud are incapable of proof, I doubt seriously that anyone connected with legal education today would deny that the last of the aforesaid factors is at least partially responsible for the phenomenon. The ramifications of the influence of the "social conscience" of today's law students and young lawyers are just now becoming evident and, in my opinion, are responsible in large measure for the current challenge facing the judicial system, the legal profession, and the law schools of this country. The challenge to which I refer has been articulated by many judges, including the Chief Justice of the United States, in the form of increased concern with the professional conduct of certain of the so-called "movement" lawyers. Law schools are certainly aware of the "radicalization" of law students demanding curriculum changes and changes in the internal decision making process of the schools to permit greater student participation. It is my belief that the judicial system, the legal profession and the law schools, despite short term concern, will emerge from this alleged "crisis" situation stronger institutions, benefiting from the introspection brought about by the new breed of lawyer and law student. Certainly, many of the changes made in the law schools in the past few years were long overdue. The profession has been reminded of its duty to represent clients zealously and without regard to financial considerations. And those who administer

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the judicial system have been forced to consider whether a dual system of justice, one for the rich and one for the poor, does in fact exist in this country.

Unfortunately, very little concern thus far has been directed toward finding out why the frustrated "movement" lawyer believes it necessary to engage in disruptive tactics to meet his client's needs or why those same lawyers, as law students, soon became alienated from the law schools, a feeling which I believe exists today to a far greater extent than is generally known. The extent to which the judicial process, being a system that favors the wealthy, or the law schools, traditionally a training ground for the business practitioner, were at fault will have to be reserved for discussion at a future time.

Instead, this article will discuss the extent to which the difficulties of the judicial system, the legal profession and the law schools are attributable to what I believe to be a false premise under which many students enter law school. The false premise to which I refer and which is an outgrowth of the "social conscience" of the "new" law student and young lawyer is the belief that the judicial process is the best (maybe the only) vehicle through which one can achieve social change working within the system. It is my belief that nothing could be further from the truth, and in fact very little progress would have been achieved in this country in the form of equal rights for all or a better life for the disadvantaged if the judicial process was the only method of achieving social change. The fact of the matter is that the judicial process is a slow, cumbersome process fraught with legal technicalities that can delay decisions indefinitely or result in decisions which, while full of encouraging language, are worth very little in the way of working a significant change. It doesn't take a very competent lawyer or even a perceptive layman to understand why. First, of course, is the fact that litigation, as a general rule, affects only the party litigants. Further, except in the case of the United States Supreme Court, the logic or prospective value of a decision is limited geographically. Lastly, and most important, a judicial decision, no matter how strongly or wisely articulated, cannot change the attitude of the people who must give substance to such decision, which is, after all, only a piece of paper and, even in the case of the United States Supreme Court, can be overruled.

One need only point to the attempts by the judiciary to abolish segregation in our public school system. In 1954, the Supreme Court declared an end to a dual school system in this country and set the standard for change as one "with all deliberate speed." It was not until very recently that any significant integration has been achieved through the very controversial (as a constitutional matter) process of busing. The net result of implementation of the Court's decision in *Brown* v. *Board of Education* has been the very real possibility of a constitutional amendment to prohibit busing originating in the Congress. In addition, the still undecided question of congressional control over the jurisdiction of federal courts, with the exception of the very limited constitutionally imposed original jurisdiction of the United States Supreme Court, raises the very real possibility that Congress may act to limit the power of federal courts to order busing of school children to achieve racial balance. The fear of a genuine constitutional crisis that could result from the assertion of such power by the Congress has, in the past, been sufficient to cause it to shy away from the use of such procedure. However, sufficient pressure from a highly organized anti-busing movement, plus the pressures recently applied by the President, could overcome such fear on the part of the Congress and the Supreme Court might be forced to settle, once and for all, the extent of congressional control over its jurisdiction and the jurisdiction of the lower federal courts. The substance of the decision in such a case would be immaterial since the mere confrontation would be sufficient to seriously weaken our constitutionally mandated system of government. "Power to the people" is a two-edged sword and, despite a belief that judicial process is immune from majoritarian control, the majority in fact is omnipotent in our country and can render judicial decisions meaningless through the constitutional amendment process, tampering with the jurisdiction of the federal courts, or the simple abdication of responsibilities by elected representatives.

The point I have been leading up to, rather verbosely I suspect, is that it is time to stop telling young people to work within the system and leaving them with the impression that by the "system" we mean the judicial process. The real change in this country, desired by many, will be achieved through the political process by organizing economically and politically the various oppressed minorities. Like all other activities in our society, the movement will be aided by the advice of lawyers, but the real victory will not be won in the courtroom, but in the city councils, the state legislatures and the Congress.

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I realize that my description of the lack of power of the judicial branch of our government runs contrary to the popular conception in this country that the judiciary has usurped many of the functions of the executive and legislative branches and has become itself omnipotent. However, a close examination of the political effect of the decisions of the courts definitely points to a different conclusion. The decisions of the courts, perhaps with the exception of those dealing with criminal procedure, that have generated the most controversy have only been decisions which have reflected the changing mores and morals of our culture and society. In other words, the courts have not brought about any political change but have pronounced constitutional decisions which the majority sooner or later would accept or had already accepted anyway. Examples are numerous, but one can easily point to decisions protecting civil and political rights of communists and other fringe political associations, protecting rights to read and distribute pornography, abolishing mandatory public school prayers, and supporting state aid to parochial schools. Only when the courts have tried to lead the majority, as in the case of busing, does the kind of opposition we are seeing today develop and show the true power of such majority.

Until such time as the limitations of the judicial process are understood by all, the feeling of frustration on the part of lawyers and law students will continue to evidence itself in our courts and in our law schools. It is time to make known and accept the fact that the judicial branch of our government really is, as described by Hamilton, the least dangerous branch in the sense of its oppressive powers, and, *a fortiori*, the least likely to succeed as an affirmative vehicle to bring about any meaningful social change in our society.

The courts will play a significant role in bringing about social change in our society, but the role of the courts will not be to lay down the framework for such change, but only to protect the rights of those seeking change through the political branches of our government.

The observations I have previously made do not represent a condemnation of the judicial process. Instead, I believe they represent a realistic appraisal of human nature and the limitations inherent in the system. To the idealistic college student determined to participate in meaningful social change, to use a worn out yet appropriate cliche, I say, "Right on!" There is a place for you in the legal profession. Those seeking social change through the political process, as well as the poor, desperately need representation. Recognize, however, that the legal services performed for those groups may be routine and not very glamorous. In addition, recognize that every ill in our society is not capable of being solved through class litigation. But, by all means, recognize that the judicial process is not the only (and certainly not always the best) means of "working within the system." ■