

NYTimes

AUG 25 1971

Role of 'New' Lawyers

To the Editor:

Chief Justice Warren E. Burger in a recent interview said that young people should not go into law primarily on the theory that they can change the world by litigation.

His "warning" to the young fails to take into account the legitimate role of the litigants and the lawyers in the judicial process; it fails to take into account the distorting effects upon our laws of the past and continuing inability of the legal profession to represent all comers—a distortion that has resulted in myopic judicial response for the poor, the minority groups, and others. The Chief Justice also fails to recognize that a new breed of lawyers has already, by their attempts to represent heretofore unrepresented groups and interests, achieved through litigation some remarkable change in the laws affecting welfare rights, housing, environmental protection, civil rights and criminal justice.

Litigation may not be the dominant tool in major social, political, or economic redress or redistribution. But its importance as part of the over-all legislative process should not be understated. Issues are frequently clarified in our courts prior to major legislative revision. For example, would the Civil Rights Act of 1964 have been seen as necessary without a long and dramatic history of test-case litigation?

Although courts are passive, litigants are not. Those who come before courts are representative of existing conflicts in the community. If new wants, in conflict with older values, and newly perceived or newly articulated injuries are brought to the attention of the courts, the disposition of those matters will necessarily result in rule changes. After all, the function of law is to bring peace after hearing complaints, not before or in lieu of hearing complaints as the modern advocates of "law and order" would have us believe.

The new breed of lawyer has seen that major social conflicts have remained outside the judicial system, on the streets or worse—locked in the

tortured minds and souls of those who have borne the enormous injuries which breed social cancers. The new lawyers seek to articulate for these new clients a quest for new remedies for these old injuries.

The slogan for Law Day, 1971, was "Change Through Law." The entry of new combatants and their advocates into the law forum, rather than remaining alienated, is a positive reply to that invitation. It should be welcomed, not discouraged.

F. RAYMOND MARKS Jr.
Senior Research Attorney
American Bar Foundation
Chicago, Aug. 3, 1971