

JEFFERSON FORDHAM'S LARGER CONCEPT OF COMMUNITY

JEROME J. SHESTACK †

By all odds, Jefferson Fordham should have shunned activity in the organized bar. His nature is active, liberal, innovative, and courageous; the organized bar has too often been passive, conservative, stodgy, and cautious. The two were mismatched.

Yet, the organized bar has held a strange fascination for Dean Fordham. He has labored hard for its programs and even harder to change some of them. And he has spent innumerable hours on bar projects, hours that some of Jeff's friends feel he could have used more fruitfully elsewhere.

I believe that the reason for Jeff's involvement with the organized bar lies in his concept of community. Long before it was popular, Jeff believed that the integrity of the individual can be assured compatibility with the advancement of group interests "only if human affairs are organized in adequate community context, measured by the reach of common interest and problems."¹ For Jeff, this concept meant that to be effective as a lawyer he had to accept the problems and responsibilities of the larger community of his profession, namely, the organized bar. To Jeff, withdrawal from the bar was a form of escapism; one met the challenge of our time by involvement, not abstention. It was a difficult philosophy, especially when the larger community in which one needed to achieve effective action was as conservative and as antithetical to Jeff's social philosophy as were most elements of the organized bar. It is a measure of Jeff's ability, determination, and attachment to democratic values that he was able to bring about substantial and progressive changes in the bar.

I had the good fortune to play a small role in Dean Fordham's efforts to create the Section of Individual Rights and Responsibilities of the American Bar Association. It was the summer of 1963. In Alabama, marching civil rights demonstrators were met by bull whips and cattle prods. In Mississippi, Negro churches were being regularly bombed and destroyed. Throughout the South, the strains of "We Shall Overcome" filled the air as the civil rights movement began to organize and awaken the nation's sleeping conscience.

† A.B. 1943, University of Pennsylvania; LL.B. 1949, Harvard University. Member, Illinois and Pennsylvania Bars. Chairman, Section of Individual Rights and Responsibilities, American Bar Association.

¹ J. FORDHAM, A LARGER CONCEPT OF COMMUNITY 109 (1956).

That June, President John F. Kennedy invited some 250 lawyers to a White House conference which, for the first time, was to involve the leaders of the profession in the critical need to secure the civil rights of millions of black Americans. The Lawyers' Committee for Civil Rights Under Law which was formed as a result of the conference proved effective and was supported by leaders of the bar.² Still, it was outside the organized bar itself.

Dean Fordham wanted more. In the summer of 1963, in an airless, dreary hotel room in Chicago, he called together a few men to propose that the American Bar Association organize a Section of Individual Rights which would nurture a sense of responsibility on the part of lawyers individually and as a group to recognize and enforce individual rights under the rule of law. As Dean Fordham told the group, the need of the profession to recognize this responsibility was never as great as at that moment. In the creation of the section, he saw the framework for major lawyer involvement throughout the country, with a potential for the sustained attention which the problems of individual rights warranted.

The original members of the organizing committee had been well chosen. Most were men, active in ABA affairs, who felt strongly that the response of the bar in this area fell short of its obligation. I recall, in particular, the articulate expressions of Arthur J. Freund, veteran civil rights advocate from St. Louis, Missouri, and a prime mover in the concept of the section; William P. Gray of Los Angeles, California, now a federal judge, and then president-elect of the California Bar Association; Solicitor General Erwin N. Griswold, then dean of Harvard Law School; and Alvin Rubin of Baton Rouge, Louisiana, now also a federal judge.³ Not surprisingly, the members of the organizing committee enthusiastically endorsed the concept of the new section.

It is difficult to appreciate how much goes into the creation of a new section. A statement of purposes must be drafted; an organizing committee must be formed; every section and committee of the ABA is consulted to see whether they have objections, and some invariably

² The initial co-chairmen of the committee were Harrison Tweed and Bernard G. Segal. Subsequent co-chairmen have been Whitney North Seymour and Burke Marshall, Arthur H. Dean and Louis F. Oberdorfer, and currently George N. Lindsay and John W. Douglas.

³ Other members of the organizing committee were: Frederick A. Ballard of Washington, D.C.; Cecil E. Burney of Corpus Christi, Texas; Grenville Clark of Dublin, N.H.; John P. Frank of Phoenix, Ariz.; William J. Fuchs of Philadelphia, Pa.; William T. Gossett of Detroit, Mich.; Joseph Harrison of Newark, N.J.; Rufus King of Washington, D.C.; Orison S. Marden of New York; Soia Mentschikoff of Chicago, Ill.; Frank Newman of Berkeley, Calif.; J. Vernon Patrick, Jr. of Birmingham, Ala.; Eugene V. Rostow of New Haven, Conn.; S. Michael Schatz of Hartford, Conn.; Jerome J. Shestack of Philadelphia, Pa.; and John W. Wade of Nashville, Tenn.

do; prospective members must be solicited; enough interest must be demonstrated to convince the bar leaders that there is a real demand for the section; numerous meetings are held before special committees of the board of governors; and much more.

Dean Fordham got all this underway. Judge Charles E. Clark once described Jeff Fordham as a "rare combination of southern charm and northern granite." The combination worked well as Dean Fordham met with special committees, talked to delegates, wrote to sections, and inched forward. There were further meetings at the ABA Annual Meeting in New York in 1964, in Miami in 1965, and at many other places. There were delays, quibbles over the section's jurisdiction, jousting over its name, and seemingly interminable interchanges, back and forth. The point that Dean Fordham kept making over and over was a simple one. "The highest values in our society," he said, "are associated with the integrity and the fulfillment of the individual human personality. . . . Within such a value system, we of the bar can have no higher responsibility than the safeguarding of individual liberty. . . . We must not let great problems of our times concerned with the first order of human values pass us by."⁴ It was a clear text and all the other commentary was really unnecessary. That message had to get across and it did.

At the annual meeting of the house of delegates in Montreal in 1966, the house approved the formation of the Section of Individual Rights and Responsibilities by unanimous vote. Dean Fordham was elected the first chairman, not, however, without behind-the-scenes grumbling by some of the elements who felt that Jeff had pushed too hard. He had indeed pushed hard, as Jeff Fordham does for things he believes in. It is a characteristic that endears him to his friends and admirers, of whom there are so many.

Dean Fordham was chairman during the critical first year of the section's activities and in an unprecedented move was reelected chairman for a second year. The section is now well established with almost 2,000 members, with many projects dealing with civil rights, hunger, overpopulation, right to legal services, campus unrest, the American Indian, human rights treaties, and other issues relevant

⁴ Statement by Jefferson B. Fordham before the Board of Governors of the American Bar Association on behalf of the Organizing Committee for a Section of Individual Rights and Responsibilities in the American Bar Association, October 15, 1965. The board of governors had appointed a special committee to consider the advisability of the proposed section, consisting of the president-elect Edward W. Kuhn of Memphis, Tenn., chairman, Glenn M. Coulter of Detroit, Mich., and Telford B. Orbison of New Albany, Ind. Members of the section's organizing committee who appeared before the board's committee in addition to Dean Fordham were Frederick A. Ballard of Washington, D.C., Professor Soia Mentschikoff of the University of Chicago Law School, and Jerome J. Shestack of Philadelphia, Pa. The special committee eventually rendered a favorable report.

to modern society. But it was Jeff Fordham who fathered the concept, sowed the seed, and nourished the plant.

Other times involved other struggles. In 1953, the ABA House of Delegates had before it a proposal modeled after the infamous Bricker Amendment to amend the Constitution to limit the treaty power. It was a misguided proposal led by ultraconservative, isolationist lawyers with an unswerving antipathy to United States involvement in the international community. Dean Fordham vigorously opposed the amendment at the ABA meeting in Boston that summer. To the discredit of the bar, the proposal passed handily. Jeff Fordham did not take the defeat passively. He helped organize a national committee of lawyers to oppose the measure, testified against it in Congress, and saw the proposal eventually beaten, albeit by the margin of only one vote.

Quite naturally, some of the dean's most fruitful accomplishments in the organized bar have been in the field of local government. Between 1949 and 1951, he served as chairman of the ABA Section of Municipal Law.⁵ Jeff appreciated that the tough problems of local government did not lend themselves to simplistic solution; what was needed was the fusion of effort by many disciplines. The dean was one of the first to organize interdisciplinary studies under bar sponsorship. During his chairmanship, he led two such projects in which lawyers, engineers, planners, and administrators worked together. One study concerned the problems of water and sewage charges; the other dealt with urban parking and traffic problems. The studies are still being used today; more important, they served as models for subsequent interdisciplinary undertakings. Here again, Jeff Fordham was considerably ahead of the times. The dean has maintained his interest in the Section of Local Government Law and he has edited its monthly newsletter for all of seventeen years. Through its pages, he often gently guides lawyers toward new modes of thought on local government problems.

This particular vignette was intended to deal only with Jeff Fordham's work in the organized bar, but I would like to conclude with a personal note. First, as a law teacher, then as a city official, I came to know Jeff through our mutual interest in local government. Through many endeavors, the friendship ripened and became one I cherish dearly. He has been, and is, mentor, friend, and ally. In Jefferson Fordham there is a lovely and rare blending of love of profession, devotion to individual man, and responsibility to community.

⁵ This section has been renamed the Section of Local Government Law, largely as a result of the dean's larger concept of this field.