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PRO BONO ADVOCATI  
OR  
WHAT JUDICIAL REFORM CAN DO FOR YOU

*Glenn R. Winters*

*Executive Director, American Judicature Society*

Mr. Chairman, Members of the Wyoming State Bar,  
Ladies and Gentlemen:

It is a privilege to be in Wyoming again and to attend another Wyoming Bar meeting. I have always felt a special kinship for Wyoming because Wyoming and Winters both come at the tail end of the alphabet. You know, the reason I never made Phi Beta Kappa in school was that my classes were always seated alphabetically—in order to be perfectly *fair* to everybody, as it was always carefully explained—and I never could even *see* the professor, let alone hear him, from the back row in which I always landed.

That same odd standard of fairness and impartiality all my life has brought me to the head of the line after the free tickets, the ice cream cones, or whatever else was being dispensed had been triumphantly carried away by the Adamses and the Allens. One of our daughters, who is not yet married, says she is waiting for a proposal from a fellow named Aardvark or its equivalent.

I don't know whether Uncle Sam awards federal aid on that basis or not, but I rather suspect that Wyoming gets highway funds, defense contracts and missile bases only after Alabama, Alaska, Arizona, and Arkansas have taken their pick. Anyway, when I'm checking a list of states for any purpose and I come to Wyoming I get the same thrill that I do sitting at a railroad crossing waiting for a freight train to go by when the caboos comes into view. Alabama says to me: "Get set and dig in—you've got along and weary job ahead of you." Wyoming says, "Hurrah! Let's celebrate! We've finally made it through to the end!"

Sometime before the close of my career I hope I may get to that stage of eminence at which invitations to speak or write

will be without strings attached—to convey whatever message I may feel appropriate. When that day comes, my eloquence and wisdom will move the world. Today, as always, I have a very specific and definite assigned subject. In fact, I was given two particular bits of information about this program—there would be ladies present, and my subject would be, “What Judicial Reform Can Do For You.” That may shock you, as it did me.

Ladies, let me say that judicial reform can do quite a lot for you and for every man, woman and child in the State of Wyoming. But before going into it let's decide what we mean by judicial reform, and, before that, reform of any kind.

“Reform” is a nasty word. Nobody likes it. Justice Tom Clark of the United States Supreme Court, one of the greatest judicial reformers of our generation, refuses to use the term. He prefers to talk about judicial “reorganization” or “improvement” or “modernization.”

Well, what is reform and why is it so unpopular? Divided into its component parts, the word becomes “re-form,” which amounts to reshape or rebuild in a more desirable form or pattern. In other words, reform means correction of faults, and right there is the rub. Before faults can be corrected they have to be pointed out, recognized and acknowledged, and what a disagreeable and painful process that is! Human nature is pretty much the same everywhere. None of us claims to be perfect; in fact most of us don't even want to be perfect. We admit our faults and failings—even boast about them—and we have a pretty keen eye for the other fellow's too; but we just don't want to hear from him about our own.

At the same time there is in all mankind a basic upward urge that has been responsible for man's climb from savagery through the ages, and to all men and women the vision of a fault includes to some extent a built-in suggestion that it be corrected.

It was the great Scottish poet Robert Burns who defined the best formula for sound reform of any kind:

O wad some power the giffie gie us  
To see oursel's as ithers see us—  
It wad from mony a blunder free us,  
And foolish notion.

To come back to judicial reform, Bob Allard, Al Levinthal, and I, and the rest of your guests at this meeting, would not have a friend in the world if we went from state to state telling people like you what is wrong with your administration of justice and what you ought to do to correct it. Judicial reform is promoted when people like these are invited in, as we have been invited here, not to preach or persuade, but to share experience and give the home folks a chance to look into Robert Burns' mirror of self examination and see how their system looks in comparison with the other fellow's.

Actually, in spite of what I have just been saying, it is getting to be almost popular to do just this. In the past three years, with the help of the American Judicature Society, and a committee headed by Justice Clark, about a third of the states have invited in guests like these for comparisons and discussions of the organization and business management of their courts, selection, tenure, compensation, retirement, and removal of judges, the minor courts, and other aspects of justice and judicial administration.

Improvements achieved and in process of being achieved as a result of those conferences are saving money for the taxpayers, lowering the cost of justice for the people involved, reducing delays and helping to ensure correct and fair judgments and impartial enforcement of the law.

Ladies, judicial reform will not curl your hair, improve your complexion, do your shopping or raise your children for you. But it will help to make you a beneficiary of all that equal justice under law means to every member of the community. Now, with your permission, I'd like to address myself especially to your lawyer husbands.

Abraham Lincoln was a great lawyer as well as a great statesman and one of his sayings will never be forgotten in the legal profession. Lincoln said: "A lawyer's time and advice are his stock in trade."

In Lincoln's earlier years he had worked in a country store, and the image helps to make clear a vital difference between the lawyer and the merchant. The merchant can expand from a small store to a large one, to a department store, to a state-wide or a nation-wide chain. A lawyer, however, has only the comparatively few productive hours of the all-too-few productive years of his lifetime to offer for sale. In this respect he is more like the radio station—no matter how big a station it may be, it has only 24 hours a day of radio time to sell, and there is no possible way to add more.

This explains at least in part why institutes on bar economics and law office management have become so popular in recent years—they help the lawyer to make the most of his limited “stock in trade.”

Other institutes and seminars that are popular with lawyers are those dealing with what are sometimes referred to as “bread and butter” subjects—how to write a will, how to incorporate a business, how to prepare a tax return.

Judicial reform is one of a group of lawyers' activities that are sometimes spoken of disparagingly in contrast to bread and butter subjects as “*pro bono publico*.” Those Latin words mean “for the good, or the benefit, of the public,” and the implication is that not these, but only the “bread and butter” items, are “*pro bono advocati*,” for the benefit of the lawyer himself.

I challenge that kind of thinking on two scores—I deny that *pro bono publico* activities are not *pro bono advocati* as well; and secondly, I think it can be demonstrated that judicial reform is in any event, a genuine “bread and butter” project.

If a successful merchant is one who has a steady flow of customers through his doors and is able to maintain a constant turnover in his stocks then the successful lawyer, I suppose, at least from the bread and butter standpoint, is the one who has clients to purchase all of the time and advice, all the professional skill, that he has to offer. A few lawyers at the peak of their career are in that fortunate position, but most lawyers are on the lookout for either more clients or better ones or both—in other words, *building* a law practice.

In the mercantile world, there are two kinds of selling—sales promotion, and the actual closing of the sale. A national advertising campaign helps to create a general public demand for the product; the merchant's own advertising brings the potential customer into his store. Both of those are sales promotion. But so far nothing has been sold. It is only when the individual salesman gets the individual customer to sign on the dotted line that an actual sale has been made.

What happens after the client has come into your office, and whether or not he ever comes back, is a matter of personal relations between you and him. But bringing him to your door is something analogous to sales promotion.

The institutional advertising and various public relations activities of the bar associations, national, state and local, render a valuable service in educating the public as to the nature and importance of the work of the lawyer and the dangers of unauthorized practice of law by non-lawyers. This is, in a professional context, the equivalent of the national advertising campaign.

Polls and surveys have demonstrated again and again, however, that people who realize their need of a lawyer often do not know where to turn to get one. Lawyer jokes and some dramatizations have made them fearful and suspicious of lawyers they don't know. Lawyer referral service has been established in many communities as one way of dealing with this problem. Those same polls, however, agree that even people who are distrustful of lawyers as a class are glad to make an exception of the one lawyer they do know.

Isn't it clear that the lawyer who devotes a generous part of his time to worthwhile community services—to *pro bono publico* activities—is the one they are most likely to be thinking of when they admit they know one lawyer who is o.k., rather than the fellow who stays at his desk buttering his bread?

In the final analysis, legal services, like automobiles or electrical appliances, have to be good in order to sell, and what happens after the client takes off his hat and sits down across from your desk is more important in building a law practice than these other things. But, having acknowledged

that, we must surely go on and acknowledge that the lawyer who heads a Community Fund drive, or serves the public in any of a thousand ways, is putting himself in a position to benefit from the profession's broad public relations programs and is making sure that within the wide circle that his contacts encompass the pollsters will find people who will have to say that they know one lawyer they would trust—him. Here, *pro bono publico* and *pro bono advocati* are one and the same.

This is certainly true about lawyers' work for judicial reform as well as for the Community Fund or any other civic enterprise, but it is only the beginning of the story for judicial reform.

Let me ask this rather interesting question—if a lawyer's time and advice are his stock in trade, what are the "tools" of his trade?

My friends of the law publishing companies are pretty sure to say that *law books* are important lawyer's tools, and of course they are right. Others will contend for mechanical devices like copying machines, dictation equipment, typewriters and files, and still others will mention the lawyer's speaking voice and his mental powers of reasoning and persuasion. Certainly all these are tools needed in the practice of law. I suggest that the courts of your community, the entire judicial establishment of your state, constitutes the single most important tool in the practice of law.

We need to remind ourselves once in a while that it is a mistake to think of administration of justice only in terms of courts and judges. The administration of justice is the business of lawyers. The Tax Court of the United States said that about 20 years ago and it has always been true. When a citizen has a legal problem he doesn't look up a court—he takes it to a lawyer. In the great majority of instances that's as far as it ever goes. The lawyer does whatever is necessary to resolve it, closes his file, collects his fee and goes on. In rare instances the lawyer finds it necessary to go to court. This is nearly always the lawyer's decision, although it is certainly tactful to make the client think he decided it himself. In other words, going to court is *one of the things* a lawyer *sometimes* does in the course of serving his clients. How often

and how advantageously he will take his clients' affairs into court depends not entirely but in considerable part on how good service he can get from it. The more efficiently, economically and fairly it functions, the better tool it is and the better use he can make of it. The lawyer who devotes a part of his time and energy to promoting the efficient administration of justice is serving the public, true enough, but he is also buttering his own bread just as truly as is the farmer who sharpens his scythe or trades in his old tractor or harvester on a new one.

The other very important way in which support of judicial reform is a bread and butter item for lawyers is in connection with the lawyer's public image, which we have already mentioned. Public service on the school board, or to the Community Fund or the Boy Scouts gives the people a good impression of you as a good neighbor and a fine fellow, but it doesn't tell them anything about you *as a lawyer*.

In fact, most of the ways in which one might draw attention to himself as a lawyer are forbidden by the canons of ethics, and properly so. There are a few exceptions. Under our free elective system any lawyer has the right to run for certain legal public offices. Even though the candidate may be defeated at the polls, his campaign is a success from one standpoint if he has taken good advantage of the opportunity it afforded to build his image as a good lawyer before people who are voters one day but potential clients every day.

Running for office has its drawbacks, however. Not everyone likes election campaigning and some of the best lawyers would be dismayed if they were elected.

Promotion of judicial reform, I submit, is the ideal way for a lawyer to build the most desirable public image of himself. There is no ethical prohibition of it; on the contrary the canons of ethics in a dozen places urge the lawyer to make his influence felt in behalf of better judges, better courts and better justice for everybody. There is no need to await someone else's leadership or permission. The judicial reform movement in every state is begging for more dedicated lawyers to step out, take the initiative and assume leadership.



Judicial reform offers opportunities at both the sales promotion and the actual "selling" levels. Lawyers are needed and urged to speak in public and to write for publication, not just in law reviews but in the public press, on judicial reform topics. Selling ideas is like selling merchandise, however, in that most "sales" are closed in face-to-face personal contact. This is the kind of activity that will also do the most for you, personally and professionally. You can never stop your neighbor while he's walking his dog and tell him that he has a good cause of action against the other neighbor and is missing a bet if he doesn't sue. You'd be in trouble with your ethics committee in no time if you started that sort of thing.

What you can do, however, and should do, is approach that neighbor, introducing yourself if necessary, and tell him that as a lawyer you are interested in improving the administration of justice. Tell him that in your opinion the legislative bills or constitutional amendments sponsored by the bar association are desirable for that purpose, and tell him why they are. Ask him to support them and to use his influence to get others to do the same.

Isn't it clear that in addition to making a friend you have impressed this man with the fact that you are a lawyer, a forward-looking, progressive, up-and-coming lawyer, and one who knows his way around the legal world? For building a law practice such a professional contact is absolutely priceless; it opens doors to you that cannot be opened in any other way, and it is not only not forbidden but strongly urged and commended by the very highest standards of professional ethics. How can any practicing lawyer afford to stay out of the judicial reform movement?

Well, I apologize. It was that prescribed title, "What Judicial Reform Can Do For You," that got me started on this line. But self-interest never has been a very good motivating force for worthwhile deeds. The people who followed Jesus out into the wilderness got a meal of loaves and fishes, but by the time they were home they were hungry again, and if that was all they got out of it, it wasn't worth the trip. Winston Churchill offered the British people blood, sweat and tears and they leaped to follow him. John F. Kennedy offered

American young people a chance to donate a year or two of their lives to helping less fortunate people in other lands and the Peace Corps has been swamped with applicants. There is, or ought to be, a bit of idealism in all of us. Don't be ashamed of it. It's one of the finest things about you. Admit that some things should be done just because they need to be done, and go ahead and do your part without being asked. Making a living by itself is a dull and dreary thing unless there's something like this along the way to help make it all worthwhile.

One of the greatest political idealists it was ever my privilege to know was Herbert Lincoln Harley, the great founder and first secretary-treasurer of the American Judicature Society. The very existence today of this great organization, of which many of you are members, is a tribute to Herbert Harley's keen and far-sighted vision and to his practical genius for getting things done.

Throughout his career Mr. Harley had a delightful custom of mailing to the Society's directors from time to time bits of verse or other items that struck his fancy. One of these was a poem "The Tail Of The World" which embodies in a colorful figure of speech quite a bit of Herbert Harley's own personal philosophy, and, I think, some of the spirit of the judicial reform movement. It goes like this:

### The Tail Of The World

The World is a beast with a long fur tail,  
 With an angry tooth and a biting nail;  
 And she's headed the way that she ought not to go,  
 For the Lord, He designed and decreed her so.

The point of the game is to drag the beast  
 While she's headed sou'west, toward the nor'-nor'east;  
 God made the beast and He drew the plan,  
 And he left the bulk of the haul to man.

So primitive man dug a brace for his sandal,  
 Took hold of the tail as the logical handle;  
 Got a last good drink and a bite of bread,  
 And pulled till the blood ran into his head.

At first he gained till it looked like a cinch,  
But then the beast crawled back an inch;  
And ever since then it's been nip and tuck,  
Sometimes moving but oftener stuck.

The beast has hollered and frequently spit,  
Often scratched and sometimes bit;  
But the men who were mauled or laid out cold  
Were the very ones with the strangle hold.

Why He 'did it I don't know,  
But the Lord, He designed and decreed it so,  
Of course He knew the game was no cinch,  
So He gave man some trifles to help in a pinch.

But the strangest card in the whole blame pack  
Was the fine sensation that paid men back;  
For the finest feeling that's been unfurled  
Is the feel of the fur on the tail of the World!