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ADDRESS BY THE PRESIDENT

American Bar Association

William T. Gossett

You have honored me, and the American Bar Association, by inviting me to address this gathering and to share with you the pleasant events of your annual meeting. It is a privilege to be here today with so many Wyoming lawyers and their distinguished guests.

The lawyers of this state have contributed significantly to the work of the American Bar Association. Edward E. Murane, of Casper, served us with great distinction as Chairman of the House of Delegates from 1964 to 1966; and three lawyers from this state, in addition to Ed Murane, have served as members of our Executive Committee or Board of Governors: Charles N. Potter, William C. Kinkead and William O. Wilson, all of Cheyenne.

In the House of Delegates we have, again in addition to Ed Murane, Jerry Housel, of Cody, representing the State Bar, and Alfred Pence, of Laramie, who is your State Delegate. We are grateful for their wisdom and good judgment in the deliberations of the House. Other lawyers from this state, too numerous to mention, have been active in the American Bar Association. Indeed, almost 65% of all Wyoming lawyers are ABA members, which ranks your state sixth in the nation in this category.

In the creative contributions of these men, and indeed of the whole Wyoming Bar, to the growth of the law in America there has been a vigorous affirmation of the fundamental doctrine that gives all law its strength and life: that is, the concept of the law in motion—the law as an avenue of progress—while sustaining with equal vigor those principles that make the law a bulwark of stability. The broadest and most constant task of our profession has been the reconciliation of that apparent dichotomy.

As President of the ABA, I expect to receive from the Bar of the State of Wyoming the same solid support that you have so generously given my predecessors. In return, I shall do my level best to provide through the ABA the quality of leadership that you are entitled to expect from that great national organization of lawyers.

In 1878, in its first year, the American Bar Association had some 200 members. That was the year in which the first telephone exchange was opened; in which the first woman suffrage amendment was introduced in the form in which it was adopted nearly forty years later; and the year that the Supreme Court of the United States held that the power to regulate interstate commerce extended to instrumentalities by which commerce is conducted. Today, eighty-nine years later, the Association has almost 133,000 members, most of whom—more than 100,000—also hold memberships in various Sections of the Association; because they have interests in specialized areas of the law.

To the statistician, those figures will be an interesting reflection of the quantitative growth of the nation. To the sociologist, they will reveal evidence of the increasing complexity of American life. To the lawyer, they will have at least two meanings: first, the enlargement of the arena—socially, economically and legally—in which every lawyer, whether in a remote village or in a teeming city, practices his profession; and second, the increasing degree to which every lawyer has become aware that he is looked to for leadership, not only in his own community, but as a member of a profession that is national in its concerns and national in its influence.

The practice of law today, to keep abreast of the inordinate demands made upon it by a fast changing society, requires paradoxically both a broader knowledge and a more specialized grasp of the law. The range of activities to which old laws are applicable, and in response to which new laws are enacted, grows almost daily. And so we are witnessing not only a radical social transformation but a parallel reorientation of the whole legal profession.

Today, for example, individual practitioners, though still a mainstay of the profession, represent fewer than 40% of all lawyers, a decline in the past two decades alone of 33%; and one of every three lawyers in private practice is a partner or associate in a law firm. At the same time, the proportion of lawyers devoting their careers to government service has risen to one out of every seven; and one lawyer in nine is employed full time by a private concern.

I remind you of these trends because they make the lawyer's task of defining and fulfilling his broad responsibility in society far more ambiguous than it has been in the past. Nevertheless, the general terms of that responsibility still are perhaps easily stated, as they were recently by Mr. Justice Fortas. Said he: "A lawyer is not merely a craftsman—or even an artist. He has a special role in our society. He is a professional . . . a professional specially ordained to perform at the crisis time of life of other people; and almost daily, to make moral judgments of great sensitivity. He is the principal laboratory worker in the mixing of government prescriptions. His is an important hand at the wheel of our economy because as a lawyer, he has a profoundly important voice in business transactions. And, of course, he is the custodian of the flaming sword of individual justice and personal liberty, as well as of the public order."

The position of every incoming president of the American Bar Association is necessarily influenced by his awareness of the aspirations of his predecessors. In this tempestuous year in the life of the nation and the world, I find myself in a situation where I look back gratefully to ABA presidents who devoted their terms to such worthy purposes as strengthening cooperation between the ABA and state and local bar organizations—as Whitney Seymour did in 1960; or to such constructive continuity as the expansion of programs of high merit instituted in previous years—as Ed Kuhn did in 1965; or to special emphasis on a single problem area in our society—such as Earl Morris so wisely did last year in singling out participation in the war against crime.

All of these concerns and all the continuing objectives of the ABA are important and relevant. In many of them, the progress made under progressive leadership and conscientious staff work has been of great significance. In 1964, for example, a committee was appointed to propose minimum standards for the administration of criminal justice. In times of stress, of conflict, of rising crime rates, on the one hand, and of rising public indignation on the other, it is a crucial test of a civilized society to resist all shortcuts to criminal justice, however loud the clamor and however tempting the pressure; for such conditions call not for the abandoning of existing standards but for their improvement.

Last February, our House of Delegates approved six reports of the Committee on Minimum Standards for the Administration of Criminal Justice: on Fair Trial and Free Press, Post-Conviction Remedies, Pleas of Guilty, Appellate Review of Sentences, Speedy Trial and Providing Defense Services. At the annual meeting in Philadelphia last month,

four additional reports were approved by the House. They are: Joinder and Severance, Sentencing Alternatives and Procedures, Pretrial Release and Trial by Jury.

Recently a report was published on Electronic Surveillance, a subject of pivotal importance in this age of complex scientific advance—an advance that can help measurably in the vital process of law enforcement but at the same time have the capacity, if unchecked, to do unprecedented violence to our most fundamental rights. Along with four more reports, which will conclude the Committee's work, the report on Electronic Surveillance will be considered by the House during the coming year.

But a major objective of the criminal justice project is still ahead of us. It is important to arrive at articulate standards; but that is merely an exercise if those standards are not implemented and do not come to life in the various states. A special committee of the Section of Criminal Law has been appointed to guide the implementation process of all the reports—except that on Fair Trial and Free Press—and will get under way in the immediate future. This will involve new state legislation in some cases and in others revision of internal rules and practices of courts and law enforcement agencies. The completion of that enormous undertaking will require several years of effort and will cost several millions of dollars. Obviously, we shall need and I earnestly solicit your support and active cooperation.

The implementation of the recommendations on Fair Trial and the Free Press has been undertaken by a new Legal Advisory Committee of our Committee on Public Relations. Since the adoption of this document, commonly known as the Reardon Report, there appears to be an increased interest, especially on the part of the press, in discussing the institution of voluntary restraints to be agreed to by the press and the bench and bar. Half a dozen or more states have created voluntary codes, and more than half the states have created bar-media committees to study the question. The ABA has encouraged the establishment of such guidelines, and the advisory committee is working to this end and to stimulate the adoption and implementation of the standards contained in the Reardon Report. We shall keep you informed from time to time of our progress on a national basis.

During his administration, the insight of Earl Morris led to the appointment, and the subsequent activity, of a Committee on Crime Prevention and Control, for the purpose of directing the work of the ABA in this field and stimulating state and local bar associations to similar efforts. Much of

the work of the Committee has been with bar organizations around the nation, urging the appointment of analogous committees and encouraging them to conduct crime prevention and control programs at the state and local level. In addition, the committee has prepared a six-week course of instruction in respect for law, which was taught on an experimental basis last spring in about sixty junior high schools; and those programs will be broadened and extended during the coming year.

During the year the Committee on Crime Prevention and Control will play a vital role in the endeavors of the organized bar to fight crime. Its current programs will be expanded and extended, and new activities will be explored, all to the end that the contribution of the legal profession in this area might reach its full effectiveness.

The onerous burden placed upon the machinery for the administration of civil law is no less—and possibly more—in need of improvement in speed, efficiency and effectiveness. Nowhere is this more apparent than in the massive load of automobile accident reparation claims. This problem is bound to increase in the years ahead. With a total of almost a hundred million vehicles populating our highways, 9 million new passenger automobiles and about two million trucks are sold every year. In the use of these vehicles, almost 14 million accidents occur annually, causing 55 thousand deaths and nearly 4 million personal injuries. As a result, about 65% of the cases on our civil jury calendars around the country are automobile accident reparation claims, and in urban areas the average time elapse between filing and trial is about 36 months. It is said that some 30% of the income of the legal profession is derived from that kind of litigation.

With a full understanding of the broad implications of such an examination and with an acute awareness of the effect its results might ultimately have upon our profession, a Committee on Automobile Accident Reparations was appointed this year to make a comprehensive study and investigation of the problems inherent in the prompt and fair disposition of automobile accident claims. The committee, which has been assisted and advised by a commission composed of lawyers and representatives of the insurance industry, the federal government, state regulatory agencies and the academic world, expects to submit its final report and recommendations to the House of Delegates next January. We trust that the conclusions reached by our committee will be helpful to the state legislatures that will be considering this highly controversial issue, to the U.S. Department of Trans-

portation, in its study of automobile accident reparations recently authorized by the Congress, to the Congress itself when and if it takes up specific legislative proposals, and to bar associations and insurance groups.

It is hardly necessary to remind such a sophisticated audience that no improvement in the machinery of the law, however brilliant in concept or plausible in practice, can serve any useful purpose unless we maintain the highest standards in the selection and in the sustenance of our judiciary. Our Standing Committee on Judicial Selection, Tenure and Compensation has the grave responsibility of collecting and studying data on this fundamental subject and of reporting to the ABA and to state and local bar associations on the status of its progress. The committee's primary efforts have been directed toward obtaining adequate compensation for federal judges, establishment of federal judgeships, and implementation of the American Bar Association plan for merit judicial selection in state and local courts.

The committee recently completed an extensive study of the judicial selection process in the fifty states, and of the extent of participation of bar associations in the process; and is now engaged in the distribution of its report to bar associations and to state governors. Copies of the report are available through the ABA office in Chicago. The report contains instructive material for the implementation of a sound judicial selection program in a number of varying situations, including model association bylaws; and I commend it to all bar organizations as a constructive step toward effective court modernization.

The broad social conditions under which the laws and the courts function must also be the subject of constant concern from the legal profession. The most pressing problem we face in this area today is the sad plight of the cities. Accordingly, last fall, we created a Committee on Housing and Urban Development under the chairmanship of John Lashly, to examine every aspect of the need for revisions of laws and legal procedures as they bear upon the oppression of the poor by substandard housing in urban areas, to consider conducting a national conference to review the wide range of housing problems, and to suggest action programs for state and local bar associations and government groups.

The Committee has approved a plan of activity for the coming year that will directly and intimately involve the bar at the local level. Through committees designated by state and local bar associations and through the use of local lawyers serving as staff personnel, the Committee hopes to stimulate

local action in helping to alleviate the grave and mounting problems of our cities. The Committee plans to conduct a pilot project in seven cities—Boston, New York City, Baltimore, St. Louis, Houston, Los Angeles and Cincinnati—with the cooperation of the individual local bar associations, and will seek financial support from foundations.

The local bar organization seems especially well suited to participate in the type of program envisioned by our Committee. Generally, when inaction by the local bar is evident, it is attributable to the absence of a mechanism designed for significant activity, to a failure to be aware of the relevant problems, or to insufficient knowledge of the potential remedies. During the coming year, our Committee hopes to fill this breach and to provide the necessary encouragement for the development of a concerted attack on our cities' problems.

The intricate and diffuse task of providing legal services to all who need them is one to which we must find a solution that will necessarily involve new approaches and new expedients. Our Committee on Availability of Legal Services was appointed in 1965 to study and make recommendations with respect to the adequacy and availability of legal services to all who need such services. The Committee's recommendations to the Association on specialization and prepaid legal cost insurance are now in the process of implementation; and the proposal on lawyer referral was approved by the House of Delegates last month. Also the House considered in Philadelphia the Committee's recommendation regarding group legal services and postponed action on its recommendations until the midyear meeting in January. The House approved, however, the recommendations on subprofessionals. The Committee plans to complete its work during the coming year, and its reports and recommendations are expected to include advertising and solicitation, legal aid and the ombudsman.

Other pressing matters in the life of the nation and the life of the profession continue, and will continue, to have the constant attention of the Association. Let me mention briefly only a few:

The initiative that we took in producing by constitutional amendment a proposed new method of electing the President and Vice President of the United States will be followed through with a strong effort to assure favorable action in the next Congress. Meanwhile, both parties have been asked to advocate passage of the measure in their platforms. In July and August, I appeared before the Republican and

Democratic Platform Committees to urge planks on electoral college reform.

The repeated threats to our national security and economy brought about by national strikes in the transportation industry is a subject in which the Association has also taken an active and aggressive interest. Our Committee has held public hearings to adduce the views in depth of management and labor on the desirability of our recommending legislation in this field and, if so, what kind. Its report is expected to be made to the House of Delegates next January.

Within the profession, the massive work of revising and updating the Canons of Professional Ethics has entered its fourth year and will culminate in the issuance of a draft of a proposed new Code of Professional Responsibility this fall and a final report with recommendations next summer. Invitations to examine and comment upon the proposed Code will be issued to national, state and local bar officers, and to judges, deans and ethics teachers, metropolitan newspapers, news media associations and others who have expressed an interest in the Code.

It is a source of great pride to me as a lawyer and as an American that the American Bar Association has had the breadth and length of vision to adopt and to activate projects of such scope. Were the times more placid, an incoming president could hardly perform a greater service either to his profession or to his country than simply to carry forward the present program with energy and determination. Certainly that is my first wish and obligation; and undertaking it provides far more eloquent testimony to the high regard in which I hold the aspirations of my predecessors than anything that I could say.

But the times are not placid. The overwhelming fact we face is that our society is not a peaceful one. Half a world away we are involved in a war that is seemingly endless. Coupled with it, there is a lamentable disarray in international relations. At home we are experiencing extreme social turbulence. Deeply rooted and widespread movements of social protest question the efficacy of the law as an instrument of social justice. This is in itself a most disturbing commentary, not so much on the theory of a lawful society as on the manner in which it is operating. This is apparent from the frequent assertions that the law has been and is being used as a device to frustrate the legitimate aspirations of those seeking to participate more fully in the benefits of American society.

It would be an obvious oversimplification to say that problems of such scope and magnitude are of concern only

to the legal profession, or that lawyers alone can produce fundamental solutions. Yet the legal order is an inherent and highly relevant factor, and the lawyer's contribution to such solutions will be of enormous importance. Indeed it is no exaggeration to say that the situation presents challenges to the wisdom and ingenuity of lawyers that in many respects are unprecedented. For in terms of obligations and opportunities for leadership in social and legal engineering the legal profession has a special competence and a compelling responsibility.

The utilization of that competence and the profession-wide rising to that responsibility must constitute our major associative effort this year. There is no side-stepping it. There is no delaying it. We have no alternative.

I propose as President of the ABA to do all that I can this coming year to mobilize the great resources and the prestige of the Association and the profession as a whole in a united effort, first, to support and facilitate by all available means the firm and resolute enforcement of the law against all violators, especially those who would destroy our institutions by violent action, and second, to open to the restless and the deprived among our people full participation in the lawful procedures that are the only effective and enduring means of social change.

Let us not be frightened by manifestations of discontent. Discontent is not a scare-word in America. It is a brave word. It is not a negative word. It is a positive word. This land was settled by the discontented. Its independence, its nationhood and, indeed, its Constitution were conceived and created in response to discontent. And almost every significant measure of social, economic and even juristic progress that we have achieved in the crowded years since has come about in an almost continuing response to discontent.

Let us who occupy positions of leadership in a powerful and disciplined calling use our formidable resources to turn in our time the discontent that wracks our society into yet another constructive chapter in the contribution of our profession to the progress of this nation. Let us respond to discontent—not ignore it. Let us direct it into creative channels—not contest it. And let the entire profession in every community throughout the land aid in discouraging all unlawful expressions of discontent by encouraging through active participation in their communities, all lawful means of expression. For it is on the local level that hope has died, and on the local level it must be revived.

Let us recognize that we are living in a time of ordeal and of challenge. We cannot do business as usual. We must persuade, when many no longer want to listen. And we must act, when many have lost faith in our action. But the active belief in a society of laws that led us into this profession must reassert itself, whatever the odds.

For the only alternative is anarchy. And as James Madison, the chief architect of our Constitution, said nearly two centuries ago, "Anarchy ever has, and I fear ever will, produce despotism."

In Samuel Beckett's play, "Waiting for Godot," two tramps are lingering along a country road. Suddenly, in the dusk, a cry for help rings out. Cautiously they discuss the risks of responding and the dangers in becoming involved. At length, one of them says:

"Let us not waste our time in idle discourse! Let us do something while we have the chance! It is not every day that we are needed. Not indeed that we personally are needed To all mankind they were addressed, those cries for help still ringing in our ears! But at this place, at this moment of time, all mankind is us, whether we like it or not. Let us make the most of it, before it is too late!"