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Report of the President

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REPORT OF THE PRESIDENT

R. G. DIEFENDERFER

In Rule 10 of the Rules adopted by the Supreme Court of Wyoming, organizing the integrated Wyoming State Bar, it is said, in part: the "annual meeting shall be held for: the election of officers, to hear the address of the President, and in general, for the discussion of matters of interest to the State Bar and affecting the administration of justice." Consequently, this address is compulsory and you have no choice but to listen attentively, under possible penalty of being held in contempt of the Court of which our association, by statute, is made an administrative agency.

Article II, Section 2, of the By-Laws of the organization, which appears as Section 2-507, Compiled Statutes of 1945, fixes this as the place on the program where the address is to be given. The purpose of this undoubtedly was and is to enable the members of the Bar to hear what the incumbent has to say, early in the proceedings, so that they may be in a position to vigorously criticize during the rest of the meeting. I have no doubt but that plenty of dissent to various matters that I will mention will be voiced before our present meeting adjourns but, nevertheless, I will speak my mind and you can do as you wish with the several recommendations I shall make.

As I conceive the reason for the President's address, it is to be a general report to the association of what has been accomplished, or attempted, by the Board of Commissioners during the current year, accompanied by suggestions of the President for what he considers to be the future welfare of the Wyoming State Bar. In accordance with such conception, it shall be my endeavor to give you, in this address, a brief review of our activities since the Cody meeting last year, and my recommendations as to certain matters that, in my opinion, vitally concern the future welfare of our profession in Wyoming.

At the outset, I want to express my appreciation on behalf of the association to the members of the Carbon County Bar for their kindly hospitality in entertaining our meeting in Rawlins. It is indeed a real task, in any of our Wyoming cities to properly care for the comparatively large number of lawyers, their wives and, in some instances, other members of their families, who attend these gatherings. I believe that the last time Rawlins was host to this meeting was in 1928 and there are very few here today who were present at that time. As I informed Reuel Armstrong when he extended the invitation at our Board meeting in Cheyenne on January 21st last, those of us who were here then have most delightful recollections, especially of the somewhat hilarious liquid entertainment extended

to some of us, including our brother Zaring and myself, by Reuel's beloved father, now gone to his reward. In passing, I believe that of that most fortunate group who defied the edict of the prohibitionists twenty-one years ago, only Zaring and I are present today. If there are others, he and I would appreciate the raising of their hands.

When the invitation was extended last January, the date was not fixed but a short time later. Reuel advised me that the Carbon County Bar wanted to have the meeting on September 2nd and 3rd so the members of the Bar could take advantage of the Labor Day week-end to take two-day trips before returning to the office grind. This was submitted to the members of the Board and the dates were approved. Since that time, there has been some criticism by those who want to attend the St. Louis meeting of the American Bar Association during the following week, and to obviate such conflict in the future, I recommend that this meeting consider the matter, having in mind that Rule 10, above mentioned, fixes the time for the annual meeting as the second week in August of each year, "unless otherwise directed by the Board," and having in mind, also, that the annual meeting of the American Bar Association is always held during the first week in September. The conflict in views should be finally settled, and the permanent policy of the association determined, by action of this meeting.

I desire at this time to express my thanks to our able secretary, Robert B. Laughlin, for his most efficient discharge of his duties in that important office and to all the members of the Board for their promptitude in giving me their views on all matters that have been submitted to them by letter. During the year, the Board has held but one meeting, which lasted most of the day last January 21st, at Cheyenne, as nothing came up which, in my opinion, warranted the calling of a special meeting, at considerable expense. I am also deeply appreciative of the various committees which so ably performed their tasks.

The year that has passed will always be recalled by me with great pleasure and satisfaction, as I feel that during my regime as your President, we have accomplished a little and have learned a great deal which should be of great advantage to the lawyers of our state in the years to come. This office has entailed a vast amount of correspondence, largely occasioned by the constant flow of requests from the American Bar Association and the American Law Institute for co-operation in various ways, particularly in the furnishing of much information on questionnaires. I am not going to follow the example of a minister whom I heard make a report to his church body not so long ago, in which he gave, month by month, the number of letters he had written and the number of calls he had made, but I will tell you that I have used three hundred three-cent stamps during the year and you can see from that figure just how much correspondence the

office of President requires. No doubt the volume of correspondence will increase as the scope of the association's activity expands and I believe that some allowance should be made to the President for stenographic services necessitated by performance of his duties.

During this year has occurred the biennial session of our State Legislature and, in keeping with our custom, your Board called our so-called "legislative meeting" to be held in Cheyenne on January 22nd, following an all-day meeting of the Committee on Legislation and Law Reform held in that city on the preceding day. On some matters, a joint conference was held between the Board and the Committee. I feel that the meeting of the Bar at that time was a great success and the banquet on the evening of January 22nd, was an even greater one. We were particularly honored by the presence of Honorable Frank E. Holman, President of the American Bar Association, whose address to the meeting, followed by his extremely humorous remarks as guest of honor at the banquet, will long be remembered by those of us who were fortunate enough to hear him.

The difficulty we experienced again at Cheyenne, of getting all our business transacted in one day, presents the question whether the legislative session of the State Bar should not be two days instead of one. Even though we started the meeting at 9:30 A. M., nevertheless we ran out of time late in the afternoon and, in consequence, the Committee was unable to bring before the Bar for consideration a number of bills which it had favorably passed upon for recommendation to the meeting. This also occurred in 1947 and it therefore seems to me that in calling the legislative meeting in 1951 the then incumbent Board of Commissioners should give careful thought to the advisability of holding a two-day session. I believe that the extra day would be fully justified.

As to the results obtained in the way of recommended legislation, I will say nothing, leaving that phase to be later explained or excused, according to the viewpoint, by Erle Reid, Chairman of the Committee on Legislation and Law Reform. Possibly some of our number who were members of the legislature will be able to amplify his report.

Once more we succeeded in obtaining from the Secretary of State's office, the distribution to each lawyer and judge in the state of galley proof sheets of the 1949 Session Laws as rapidly as they were printed, at the cost of a few boxes of candy to the personnel of that office. When the matter was broached to Dr. Crane by Mr. Laughlin and me, he was most gracious in immediately acceding to our request that the service commenced in 1947 be continued this year, and he expressed gratification that the Bar, generally, appreciated the advance sheets as filling a great need. I feel that a vote of thanks from this organization should be given to the Secretary of State's office for giving us the new laws of our state so quickly after their passage. If this had not been done, we would still be waiting to

know positively what they are as the bound volumes of the Session Laws are not yet distributed.

Rule 19 of the Wyoming State Bar Rules, appearing as Section 2-420 of the Compiled Statutes of 1945, provides that: "The ethical standards relating to the practice of law in this State shall be the canons of Professional Ethics of the American Bar Association, including the additions and amendments of September 30, 1937, thereto, and those which may from time to time be approved by the Supreme Court of Wyoming." For many years, it has seemed to me that every lawyer should familiarize himself with those canons and comport himself in accordance therewith, as I have seen and heard of various instances in the practice where the conduct of attorneys at least verged closely upon disregard of them, as I vaguely understood them to be. I imagine that most lawyers have thought of the Canons more or less as I did: I knew that they existed and felt that they should be observed by the profession, but I didn't know what they were. To remedy this lack and to bring about in the lawyers of our state a revived consciousness of their duties in the profession, your Board authorized the publication, in pamphlet form, of the Canons, together with the Standards for Title Examination adopted by the organization. This was done by the Mills Company, of Sheridan, at the cost only of \$146.27, and a copy has been handed to each of you as you registered at this meeting. Copies will be mailed by the Secretary to all our members not in attendance here, and the Law School of our State University and the Clerk of the Supreme Court will be kept furnished with sufficient copies so that each law graduate and each newly admitted lawyer will be presented with one with his diploma or his certificate of admission. Henceforth there will be no ground for any Wyoming lawyer to claim that he doesn't know what the Canons are. We sincerely hope that the level of professional conduct will be elevated as a result of this accomplishment by your Board; an accomplishment which I feel is praiseworthy if we have done nothing else during the year.

At this point, I want to comment upon the fact that only three accusations of professional misconduct have come to my attention during the year and all of them were of a minor character. You will be glad to know that all these matters have been satisfactorily adjusted. It should be noted, however, that only rarely are such charges openly made against a lawyer while it is common knowledge that the laity, as a whole, regards the members of our profession with suspicion. It is our duty to so comport ourselves that no such such suspicion is aroused, and to this end I especially urge that every lawyer in Wyoming carefully refrain from arousing or encouraging in anyone outside of the profession, client or otherwise, any professional disrespect for another member of the Bar. If you feel that such disrespect is justified, take up the matter through the proper

channels of this organization and get the matter adjusted there but do not discuss it outside of our own circle, particularly not to get business.

Another accomplishment of this year in which I, and I know all members of the Board, take great pride, is our participation in the organizational meeting of the Interstate Bar Council, which was held at San Francisco on February 5th. The invitation for the Wyoming State Bar to co-operate with the Bar organizations of the other western and Pacific coast states in setting up this Council came from Harry J. McClean, President of the California State Bar, to me, as your President. I brought up the matter before the Board meeting at Cheyenne and the Board authorized our distinguished Vice-President, Alfred M. Pence, to represent us at San Francisco, which he did, at the cost only of his bare expenses. His report made to me after his return, which I communicated to all the other Board members, was so startling in its import and so terrifying in its implications that I immediately invited Mr. McClean to speak here. However, prior commitments prevented his acceptance and I will therefore call upon Mr. Pence, later in this meeting, to convey to you the information which he gained at San Francisco and to report to you upon the progress that is being made by the Council toward resisting the tidal wave of state-ism, socialism and even communism that has swept over so many of our cherished American institutions and principles and threatens to destroy them all. Listen to his report most carefully, because the future of our country as we have known it—and of our profession—is at stake.

This brings to my attention the suggestion that I have heard advanced that the admission of lawyers to practice in this state be restricted in some way. If this be effectuated by the raising of standards for admission, I am in favor, but not otherwise. To attempt to restrict the number of lawyers by legislative enactment (which could not be obtained) or by fiat of our association or of the Courts smacks too much of state control by establishment of a monopoly to suit me.

Nevertheless, the duly licensed attorneys of the State of Wyoming are entitled to be protected against the unlawful practice of the law by persons who are not qualified, and the people of the state, generally, are entitled to be so protected. This matter of illegal practice is forever with us and will be until some more definitive action is taken in this state than heretofore. During the past year, the matter, like Old Faithful, has bubbled up several times but because of the uncertainties of the situation, your officers have felt helpless to take positive action, much as we wanted to. As I see the law, however, there is a plain and simple solution to the problem and that is for the Supreme Court of Wyoming to define, by Rule, what constitutes the practice of the law. I am convinced that the Court has full power to do this

under the provisions of Section 2-401 of the Compiled Statutes but, in order to ascertain whether the Court does possess such authority, the question should be briefed on behalf of the Bar. This will require considerable research and should be paid for by this organization. If the brief is favorable to the premise I have advanced, the Supreme Court should be petitioned, by this association acting through its duly authorized officer or officers, to adopt such a Rule and the matter should be thoroughly presented to the Court so it will be fully advised. I recommend that appropriate action be taken by this meeting to achieve the end I have just stated and I understand that, in accordance with a suggestion to this effect that I made to certain members of our Bar some time ago, a resolution along this line is to be submitted during the present meeting, for your consideration. In the light of my experience as your President, I hope your action thereon will be favorable. It is the only way for us to get results.

Possibly the Supreme Court will look with greater favor on that matter than they do upon the last endorsement made to it by this Bar: That the Rules of Civil Procedure as finally approved by the Advisory Committee be adopted. At present, there appears to be no prospect that the Rules will be adopted as an entirety, although one of them—that relating to pre-trial conference—was adopted by Order of the Court entered on June 7, 1949, to become effective on January 1, 1950. At the same time, a Rule not considered by the committee was adopted also effective on next January 1st, fixing the entry date of a journal entry as the date when the memorandum thereof is filed with the Clerk of Court. This information was contained in a letter written to me on July 27th by Chief Justice Riner, in reply to an inquiry I had written to him on July 23rd as to the status of the proposed new Rules, so that I might be able to report to this meeting. In his letter, the Chief Justice gave the Court's reasons for not proceeding further at this time, chiefly that the new Rules would require judicial clarification and citing the fact that there are already eight volumes of decisions in the United States Courts, construing the Federal Rules. It seems to me that the advisability of pressing for immediate adoption of the Rules, as a whole, should be carefully considered. The matter will be thoroughly discussed at this meeting, as the result of a meeting of the Advisory Committee held last evening.

In his letter, Judge Riner stated, with evident pride on behalf of the Court, that it was fully up to date in its work. This is indeed a splendid achievement and I am sure that every member of our Bar appreciates it.

As an administrative agency of the Supreme Court, it is the duty of the Wyoming State Bar to consider and act upon all "matters of interest to it and affecting the administration of justice." This is expressly stated in Rule 10 of the Rules setting up the organization of this Association. There are many such matters that, as yet, have not

been touched upon by us but which should be considered and acted upon in future years. We lawyers entered into the practice of our profession for the primary purpose of making a living but in so doing we voluntarily assumed an obligation toward the public at large that no other group possesses: to apply and use our specialized knowledge of the laws for the continuing betterment of the conditions of our fellow-citizens as long as this government of ours is one of laws and not of men. I am not one of those who platitudinously proclaim that all the wisdom of the ages and of the present is concentrated in the lawyers because I know better and so do you. Nevertheless, there exist manifold instances where our legal knowledge can be applied to bringing about changes in existing conditions that will be of tremendous benefit to our state and our communities, as an unselfish public service and not for the purpose of gaining more dollars for ourselves.

For instance, there is the matter of the bewildering hodge-podge of laws governing the organization and operation of cities and towns in Wyoming. As those of us who have been connected with municipal government know all too well, there is a conflict and overlapping of various statutes, in connection with the several classes of cities, that frequently makes it most uncertain just what law applies in a particular situation. I am, of course, especially familiar with the situation affecting Sheridan, which is a city of the first class operating under the commission form of government. Because of the chaotic condition of our municipal laws, to even guess at what law controls there on a given point, three different divisions of the statutes must be consulted and studied there: those controlling the general incorporation of towns, those controlling cities of the first class and those controlling cities under the commission form. The other cities of the state all have similar problems. It seems to me that this association could perform a wonderful work for our state if we would make a careful study of the existing municipal government constitutional provisions and statutes and recommend such revision as will either give our cities and towns the power of home rule or a stream-lined and modernized code which would permit each municipality to adopt and operate under such form as it desires but which would establish one set of general laws, applicable to all. I suggest that this be taken up as a major project of this Association and that a committee of lawyers experienced in municipal government be appointed by our incoming President to do the job, during the next year, with its necessary expenses to be paid by this Bar.

Another survey that might well be undertaken by us, to the great benefit of our clients and to our own increased financial gain, is that of the existing judicial system in our state. As we all know, there has been no change in the basic system since territorial days, although new districts have been created by the legislature from time to time, and from an organizational standpoint, our courts go plodding

along just as they did a half-century and more ago. Litigation is a lagging and cumbersome process in many counties, especially if a jury is demanded or a change of judge becomes necessary, and the delay that all too frequently occurs in getting a case to trial oftentimes makes a mockery of justice and creates disgust and dissatisfaction with our legal system. This is due just as much to the complacent attitude of some judges as it is to procrastination of the attorneys and I believe that if the disposition of cases should be speeded up, whether the lawyers concerned wanted it or not, criticism of the courts by laymen would largely cease. The possibility of assigning district judges to the trial of cases in various counties, by some central organization such as is done in some states, might be carefully examined. Of course; at this time a district judge in Wyoming is under no obligation whatever to try a case outside of his own district—and even there only as he wills. He is under no control whatever and can do exactly as he wishes in regard to trying cases or transacting other Court business. This is true as well of the Supreme Court Justices. No judge in Wyoming can be removed by anyone for any cause whatever—as a constitutional state officer, he must be impeached by the legislature. This is an unwholesome situation and, while we in this state have been in the past, and now are, favored by the presence on the bench of lawyers of the highest degree of integrity and of outstanding ability, yet, as a safeguard for the uncertain future, it behooves us to look over the situation *now*, not to the end of controlling judicial decisions but to bring about greater efficiency in the handling of Court business.

My attention was directed to the condition I have just described when I answered the first questionnaire I received from the American Bar Association. It pertained to the judicial system in Wyoming and the closing question was: "If your state has no Code of Judicial Ethics, what standards of judicial conduct are applied?" My answer to this question necessarily was: "Only those arising out of the individual consciences of the several judges."

The American Bar Association has adopted a Code of Judicial Ethics but I have no knowledge that these have ever been adopted, or even considered, in our state. We Wyoming lawyers are bound by the Canons of Professional Ethics of that Association, duly adopted by rule of our Supreme Court, and certainly we are entitled to have a similar Code applicable to the judges, establishing rules of conduct for them to follow. After all, any judge is only a lawyer who is a better vote-getter than his fellows and the mere fact of his election does not render him sacrosanct and immune from reasonable and proper control in his relations to the Bar and to the public.

At the Cody meeting, I was instructed to appoint a committee to study and report upon the advisability of establishing County Courts in Wyoming. In making the appointments to that body, I

suggested that it make a study of our judicial system, generally, but, unfortunately, the committee has not functioned. I recommend that a new committee be appointed by the incoming President, with one member from each judicial district, to make such study and to report its findings to this Bar at its next annual meeting, and I further recommend that this meeting authorize the Board of Commissioners to take such action on adoption of the Canons of Judicial Ethics as it shall deem advisable, after study of the matter.

Ladies and gentlemen of The Wyoming Bar, with this meeting my official connection with this organization will terminate but my unofficial interest in it and its affairs never will. My personal conviction is that we face many new and perplexing problems in this turbulent and revolutionary time in which we are living, but I am confident that this Association will fearlessly confront and deal with those problems as they arise in our state. We are few in numbers but by working in unison we can be an even more potent force than we are now. Let us courageously face the future, resolved to preserve our American way of life, and determined to elevate our profession and benefit mankind.

THE PROPER PLACE AND FUNCTION OF THE LAWYER IN SOCIETY—SOME REFLECTIONS

ERNEST WILKERSON*

Nearly one hundred years ago, an Englishman determined to write a book. He wanted to set down lucidly and compellingly the principles which guided his life, and to dispel, as well as one man could, the half truths and the prejudices which he felt impeded a tolerant understanding of his beliefs. *He undertook the task prayerfully, and wrote with the clarity and discernment which is achieved only by those who are determined to assemble words in a manner which will reach the hearts of men. He wrote with an inner compulsion to say what he believed to be true and what he believed needed saying.* The result was a message, which, in its realm, is a masterpiece. The man was John Henry, Cardinal Newman; the book, *Apologia Pro Vita Sua*, Any one who reads the work and lays aside his preconceptions of dogma and dialectics acknowledges the genuineness and worth of Newman's efforts. The significant thing is not whether one adheres to Newman's creed; what is significant is that here was a man who had a deep-rooted belief in the meaning of his life and works and could explain it in comprehensible terms to his fellow men.

Newman, it happens, was a practitioner of religion. He could equally well have been a practitioner of medicine, of farming, or of

* Of Casper, Wyoming; member of the Wyoming State Bar. This paper won for Mr. Wilkerson the 1949 Ross Essay Prize, in the contest conducted by the American Bar Association.