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Wyoming State Bar Annual Meeting Address

Clarence A. Davis

American Bar Association. The reason they are discussed is to improve our condition, and that is the reason I pass them on to you.

Of course, beyond question, many of the problems pertaining to the bar of other states are much more acute than ours. We, in fact, are fortunate to be entirely free of a vast number of their worries. At the same time we do have some of them, and may have more. Consequently, we should be ready to meet any contingency.

Before closing I want to thank the Wyoming State Bar for the honor it has bestowed upon me. I have been able to hold an office I had long hoped some day I might. Whether or not I have *filled* the office I must allow others to judge, but I do appreciate having the opportunity to try. Any time I have called upon any of you for help I have readily had it. I have had your time, your attention, your advice, and your utmost good will. More could not have been asked. Although I am soon to retire as your President, I trust I may still have the opportunity to serve you, and to assist in maintaining the present high standing of our Wyoming Bar, and if possible to improve it.

WYOMING STATE BAR ASSOCIATION

HON. CLARENCE A. DAVIS*

August 26, 1952

Mr. President, Distinguished Guests,
Members of the Association,
Ladies and Gentlemen:

It is a pleasure to be here.

That very flattering obituary which your President gave by way of introduction, I'm sorry to say, is not a completely adequate description of my varied accomplishments. For I belong to another select and limited group of specialists at the Bar—I am a Pig Lawyer.

During one of those hot lazy afternoons for which Nebraska is notorious (welcome to Wonderful Wyoming), the telephone rang. It was New York. Now I don't know how you all react, but in our impoverished lives, when the girl says New York calling, we snap to attention and say, "Yes, Sir."

Well, the gentleman said, "My name is Mr. Randall. We have never met but I think I can identify myself."

"You've heard of railroad lawyers?"

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*Past President of the Nebraska Bar Association.

"Yes."

"You've heard of insurance lawyers?"

"Yes."

"You've heard of patent lawyers?"

"Yes."

"Well, you're now talking to a pig lawyer."

It seems that the science of medicine for pigs is leaping forward just like a lot of things these days, and the gentleman's company has a new drug for sick pigs that unfortunately our statutes seem to frown upon—or did back in those primitive days of 1927 when enacted—and did I think it had become uncontitutional by reason of the advance of science?

Well, now for $2500 I'd undertake to prove anything done in 1927 was unconstitutional or something, so the gentleman said,

"O.K. You are now a member of the National Association of Pig Lawyers."

That's the only legal organization I ever joined where they paid you to come in.

Anyhow, when President Hill invited me to speak at the Association's Annual Dinner, the old question arose, "What shall I talk about?" Now, modesty is not one of my outstanding characteristics. I'm always like the high school senior who came to the platform to deliver his thesis and said, "Ladies and Gentelmen, my subject is 'The Past, the Present and the Future.' "

And there seemed so many possibilities out here in Wyoming to do good. For instance, I felt perhaps I ought to use the occasion in one last frantic effort to save some old friends from eternal damnation and deliver an old guard Republican speech.

But we have a truce down in Nebraska. To keep it clean the Democrats have agreed to not tell any lies about us, and we've agreed to not tell the truth about them.

But we got the worst of the deal. We fussed about the Communists 'till they passed a law that before you can get a government job you have to take an oath that you don't belong to any organization that has for its subject the overthrow of the government. You know what that did to us—by administrative interpretation!

I think this little incident illustrates some of our feelings about these matters. Up in the Attorney General's office in Lincoln we have a young chap whose business it is to follow the Acts of Congress and report any of them which might have an effect upon state law. He came wandering into

the outer office the other day with a marked copy of a recent federal act which bore the rather startling title "Bastards—Support and Maintenance of in the District of Columbia," put his finger on the title and said:

"Do you suppose this is the general salary appropriation bill?"

So I finally wrote President Hill and said, "What kind of a speech do I make?" And he said, and I quote, "Remember the ladies will be there, so nothing too profound—better keep it on the light side."

For some reason women resent that statement, which I feel is purely objective and factual. Furthermore, I think your President was right. We can't tell 'em anything. They know more by intuition than we can get from the law books.

Intuition, you know, is that gift which enables a woman to arrive instantaneously at an infallible and irrevocable decision without the aid of reason, judgment or discussion—and then some people want to give 'em *equal* rights!

Actually, they're too smart for us now—they know things we never thought of. I heard a grandmother the other day (she was looking at her granddaughter in one of those new-fangled bathing suits) and she said, "If I'd had one of those when I was your age, you'd be six years older now." Didn't seem to faze granddaughter. She got dressed, rolled the suit up in her handbang and went on. But three days later she was surprised. Went to take the suit out of the handbag and it was gone. She finally found the explanation—in the bottom of her bag were three moths—all dead of malnutrition.

How do I get back to the Law?

And I must get back to the law, for this is a lawyer's meeting—and the supremacy of law is the great American vision—the ideal which has inspired men's souls for generations—and we are the custodians of that law.

It will not hurt any of us to recall for a few minutes that only in the last two hundred years has that great ideal of the supremacy of law been borne to fruition. For thousands of years before that, it was a dream and a vision, far removed from reality.

The long road upward from the dawn of recorded history is a story, not of control of men by law, but of government by men, by the assertion of power, either temporal or spiritual. The Asiatic tyrants—the Egyptian Pharaohs—the Roman Emperors—the petty kings and empires of the Middle Ages—the Hitlers—the Mussolinis and the Stalins—all bestowed upon men and women such rights as seemed advisable at the moment, but except in interludes, these did not depend upon law.

But America is founded upon the supremacy of the law—and the rights, the duties and the privileges of everyone of us are defined, asserted or

protected by the laws of these United States. We, together with our brother lawyers on the Bench, are the custodians of that law, the custodians of every piece of property and of all the rights of every man, woman and child in America!

We control the administration of justice. We are the officers of the court. We must remember that we are the instruments, and the only instruments, through which people may approach the courts seeking justice. This is a tremendous responsibility. If we fail, even the courts are frequently powerless to correct our errors. We are, therefore, the ones who must bear the criticism of faults in the administration of justice.

We have a monopoly over the practice of law. Why? Not because we are a favored class. We were given this monopoly as early as 1292 by Edward the First. We were given it, and I quote, "that the king and people might be well served."

The doing of justice among men is perhaps the highest and noblest calling to which man can be dedicated.

Said Mr. Webster in one of his great orations:

> "Justice is the greatest interest of man on earth. It is the ligament which holds civilized beings and civilized nations together. Wherever her temple stands and so long as it is duly honored, there is a foundation for social security, general happiness and the improvement and progress of our race. And whoever labors on the edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to raise its august dome still higher in the skies, connects himself in name and fame and character with that which is and must be as durable as the frame of human society."
> Are we continuing to build that temple of Justice?

Are we, who are the special custodians of this great obligation, serving people well? Are we leading in the constant struggle to improve the administration of justice?

Many of the available statistics and cursory observations of the current scene lead one to wonder. Our critics today say that we are engrossed in technicalities, tolerant of delays that are permitted in no other field of modern activity; that our system is inefficient in that it wastes endless hours of time, of witnesses, jurors and litigants; that many of our members are not competent; and that considering the services rendered and the number of people served, that legal fees are too high and that consequently, there are vast numbers of people who cannot afford to employ counsel and are deprived of their rights.

These sound like formidable complaints, but actually, criticism of lawyers is not new, and the criticism of courts is as old as history. As early as 900 B.C. an ancient Egyptian, among other writings, said (Wisdom

of Anii, 900 B.C.), "Go not in and out in the court of justice, that thy name may not stink." Nine hundred years later, in the New Testament (Luke 11:52), it is said, "Woe unto ye lawyers, for ye have taken away the key of knowledge; ye entered not in yourselves, and they that were entering, ye hindered." At least we have the key to knowledge—however we may have used it!

But we do have much modern evidence of dissatisfaction with the courts and our profession. This has resulted in many devices attempting to by-pass the courts, as for instance, the tremendous growth of the American Arbitration Association and the frequent arbitration clauses used by large business organizations. We have an instance of dissatisfaction in the institution of Workmen's Compensation laws and courts, in the vast growth of administrative law, in the encroachment upon the law by other professions, particularly the trust companies and the accountants, and we have recently had even more vivid illustration in attempted direct action by the Chief Executive.

We lawyers know that some of these things are a remedy much worse than the disease itself. Any lawyer who has dealt with arbitration tribunals knows that the tendency is almost universal to "split the difference" — which is another way of saying that someone only gets half his deserts—half justice.

The tremendous growth of administrative agencies and tribunals is testimony to two things. First, that the legislative branch admits itself not competent to legislate and so delegates legislative powers to some department or agency, through the right to adopt rules and regulations, and second, that the enforcement of such laws through the courts is not efficient and that agency decisions and rulings provide equivalent justice more efficiently.

Of course, no greater fallacy exists if we are seeking justice.

There is scarcely a lawyer present who will not agree that we developed procedures in many of these agencies where administrative decision may be delayed at the whim or policical caprice of an administrator, far beyond any delays possible in the courts; we have actually multiplied red tape a thousand times; that until the bar associations took a hand, many of these agencies were prosecutor, judge and jury combined; that many of the procedures were so ill defined that a supplicant's rights—and I use the word advisedly—could be lost through procedural defects—the very thing the courts have long sought to remedy; and that, in many cases, by the denial of adequate appeal provisions, we seriously impaired the rights of our people to receive due process of law.

If we do nothing else, let us continue the battle for adequate judicial review. It is a continuing battle. Scarce a session of Congress or of a Legislature but that someone proposes, with reference to his particular

pet field, to somehow dodge the judgment of the courts. However plausible he may be, let us remember how frequently history has demonstrated that there is no substitute for an independent judiciary, and that the long and noble traditions of the Bench do not readily encrust themselves about department heads, administrators, boards and commissions.

We complain about the encroachment of other professions into the practice of law, but let us face the fact that that encroachment is largely made possible because these people perform legal services that many lawyers are either ill equipped to handle or which they shun because of the work involved and the necessity of constant study to keep abreast of developments. That is particularly true in the field of taxation. How many of us have said to a client, "Have your accountant figure it out," without saying what to figure out—or without ourselves hiring the accountant and asking him to submit his report to us rather than the client?

Is it not at least sometimes the fact that we don't want to thumb through the loose leaf services, which we've never bothered to master? Yet the problems are legal. Legal principles determine applicability. Legal evidence is required. A careful distinguishing of precedents is involved. But too many lawyers ignore all this.

Until we develop a Bar which is composed, not alone of a few specialists, but of general practitioners who are reasonably competent in the field, we will not stop the public from consulting others who are ready and willing to serve, whether able or not.

We, as lawyers, have done a great deal which the public do not realize to improve the administration of justice in these very fields where criticism occurs.

1. It is the lawyers, speaking through the American Bar Association, who are primarily responsible for the Administrative Procedure Act which brings some order out of chaos, and compels administrative agencies to hold hearings with some degree of judicial fairness, requires impartial hearing masters divorced from the partisanship of the complaining agency, and provides, although limited, some reasonable method of appeal from administrative caprice.

2. It is the judiciary itself which is responsible for the Federal Rules of Procedure which have made uniform the practice in the federal courts and which have eliminated technicalities and obsolete processes, almost without number.

3. It is the lawyers and the judiciary that have brought an administrative officer into the United States courts, whose business it is to see that the courts function efficiently, that there is not a waste of time and a loss of man-power or undue delay.

4. It is the lawyers who are responsible for the continuing extension

of the American Bar Association plan for the selection of judges, which, it seems to be conceded, over a period of years has resulted in a more competent judiciary and in placing the judges in a more firm position where they may decide controversies without so much fear of public clamor and retaliation as has characterized many unpopular but legally correct decisions in the past.

5. It is the lawyers, more than any other profession in America, who from day to day, and gratuitously, are constantly giving advice to all manner and descriptions of people with casual questions for which they neither reecive nor expect any remuneration.

6. It is the American Bar Association, operating through numerous state associations, that in the large cities have set up free legal aid bureaus, who every day render legal help and assistance to thousands of people without any remuneration whatever, purely as a public service for the protection of those who are without funds.

7. It is the American Bar Association that is sponsoring a lawyers referral service in many of the cities of the country, not only attempting to establish some central location where people who are not acquainted with lawyers may go for recommendation, but who are guaranteeing to the great lower income groups that they may have a half hour's consultation with a responsible member of the bar for a fee as low as $5, and that the integrity and competency of the lawyer to whom they are referred is guaranteed by the Bar Association.

This is not the time nor the place to make a speech about the Lawyer's Referral Service. It is the subject of a full scale address in itself. It has perhaps litle applicability to our states of Nebraska and Wyoming, but it is a tremendous, gratuitous undertaking on the part of the organized Bar to make sure that no one is ever without competent legal advice.

What other profession is there that has undertaken, whether paid or not, to make sure that every person in the United States has the benefit of its services, and has those benefits without increasing the load upon the taxpayer and without the intervention of government agencies?

The accomplishments of the organized Bar might be extended indefinitely. It is a record of which we not only should be proud, but of which we should affirmatively brag, and we are far too modest in not more boldly asserting the tremendous service that the organized Bar is rendering to the public through these changes for which it is primarily responsible.

And yet, by and large, too many lawyers have viewed change with reluctance and sometimes with disapproval. Let us not be like the old fellow up in Maine. This old man had lived to be a hundred years old, and on his birthday the New York papers sent up photographers and

reporters to get an interview, and they said to the old fellow, "You have lived here a hundred years. You must have seen an awful lot of changes in this community during that time." And the old fellow says, "Yep, there has been a lot of changes, and I've been agin every dang one of 'em."

May I give you briefly some tangible things that we, as Bar Associations, may do to continue to carry out our obligation to improve the quality of the Bar and the administration of justice.

First, in this rapidly changing world, it is vital that the profession keep itself abreast of the changes. It is admittedly impossible for any one individual working alone to keep abreast of the developments in all of the fields of the law so that he is a safe advisor to his clients. But, by giving a few days each year to the attendance of legal institutes or clinics where experts in the field can orient him to the fundamentals, it is possible for him to have at least a general knowledge of that which he is supposed to know. We can't have too many such institutes—where we can let our hair down (if any) and frankly ask questions of those who have studied the subject in detail and exchange ideas with those who have learned the hard way. Taxation, procedure, new legislation, the problems of organizing and operating a small business under all the regulatory and restrictive laws that exist, are some of the fields that yield pay dirt.

We have made a fine beginning in the field of legal institutes! But we have a very long way to go, and we still compare unfavorably with other professions in that regard.

Second, we can continue, and we must continue, to constantly improve the qualifications of those admitted to practice law. I don't know how many of you may have read the splendid article by my friend Arch Cantrall of West Virginia in the American Bar Association Journal for March, 1952, but it is a thing which must compel any lawyer in all honesty to wonder as to the efficiency of our system of training for the Bar.

Mr. Cantrall compares us with the doctors.

It is a common complaint of us lawyers that the young doctors step into large practices, that they make a great deal more money and light on their feet, running, when they complete their education; whereas, the young lawyer, given a diploma, is turned loose upon society with a certificate to practice law, when in many cases we know that he is ill prepared and not actually competent to do so. The comparisons drawn with the medical profession are painful. After a longer period in medical school than the young lawyer spends in the law school, the young doctor serves for at least a year as an intern in a hospital under the supervision of a hospital staff of competent doctors, and he usually serves two more years as a resident physician in some other hospital. Even in the medical school much of his instruction has been actual observation of the treatment of patients; all of his two or three years of postgraduate training are actual practice under supervision of experts. The young lawyer, on the other hand, is frequently graduated from the law school without ever having been inside

a court room to follow through a complete trial, without ever having examined a real abstract of title, without ever having made a tax return, without having drawn a pleading except where the facts were clearly given him—his education confined almost entirely to the study of appellate decisions, which Mr. Cantrall characterizes as "a cemetery of errors." Mr. Cantrall puts it graphically:

> "The study of medicine is not limited to the analysis of post-morten reports, to see what mistakes were made by the attending physicians. The medical student is taught how to do it right in the first place. He watches the operations of eminent surgeons. He sees top-ranking physicians examine living patients. He learns to take a pulse. He listens to heart and lungs. Most important of all, he does things not merely once, as a law class visits a court-house, but literally hundreds and hundreds of times, until they are second nature."

It is true that the young lawyer, in the course of two or three years, and by a series of hard knocks, learns about the practice, but what about the clients on whom he practices and who lose their cases because of in-efficieny due to the inadequacy of his preparation?

That does not contribute to the standing of the profession. It may result in a denial of justice. It does not meet our obligation as custodians of justice.

In the next few years I suspect you will all hear a great deal about the revision of the methods of preparing young lawyers to practice law. The field is too vast to discuss here, but let me at least direct your thoughts to the inadequacy which we all must recognize in the present system, which involves little practical experience, no requirement for the beginning of practice under experienced guidance, and no training of any kind in the actual work-a-day lawyer's world, except that which is secured by hard knocks.

Nor has all the odium of comparison to do with the young lawyer. The rest of us are vulnerable. The doctors pack frequently fifteen one-hour papers into a two-day meeting. It is rare that we get half that many. The efficiency of our meetings may be greatly increased.

We are all engaged, as are you here, in just as elaborate programs of "public relations"—whatever that is—as our purses will afford. We in Nebraska are grateful to you for some of your programs that we have appropriated. But, in this connection, I might comment that while public relation programs are fine—I have supported them and will—we must remember that excellent radio commercial, "Quality of product is essential to success"; that the first principle of advertising is to "see to it that the goods live up to the copy"; and that "it doesn't pay to advertise unless you can deliver the goods." The best long range answer to the unauthorized practice problem is a better qualified bar.

Judge John Parker of the Fourth Circuit puts it very well when he said, "I conclude with two thoughts. The first is that if the lawyer wishes

to preserve his place in the business life of the country, he must improve the administration of justice in which he plays so important a part and bring it into harmony with that life. . . . The courts are the one institution of democracy which has been entrusted in a peculiar way to our keeping."

Third, we all feel, I am sure, a sense of obligation to our country to make clear the cornerstones on which it rests.

Do we not all agree that the conception of an independent judiciary is the corner stone of all human liberty?

Do we not all agree that the division of powers is the most basic conception of the American Constitution?

Whether it is the fault of the home, the educational system, the courts or the lawyers, and regardless of our partisan belief, were we not shocked and amazed at the complete lack of public comprehension of the division of powers in the national crisis so recently arising in connection with the steel seizure?

For my part, I was horrified to find that graduates of our school system, and even of our universities, had almost no conception of the function of the judicial branch of the government, and little, if any, conception of the safety that lies in the division of powers.

Somewhere the lawyers have failed in their obligation to the public, either by inadequately explaining these things themselves or in failing to see that they are adequately explained to our youngsters as they grow up. Without this conception of the importance of an independent judiciary, the way is made easy for the judicial system to become an arm of one of the other branches of the government and for us, as independent members of the bar, to follow the line of the administration in power and become supplicants for judicial favor instead of advocates of the rights of free individuals. That, of course, is the primary message which should be given to every lawyers in every bar association. I shall not pursue it further, for perhaps this is not the place.

These short-comings, if such they be, I am discussing strictly in the bosom of the family. They seem to be some of the things which we might do as our contribution toward building the temple of justice. They are strictly within our power to do. Let no man deceive himself. The lawyers enthused, organized and speaking as one, are the most potent voice in America on problems of law and government.

United we can accomplish any objective which we set as our goal. Divided or unorganized we are completely ineffectual. We have an official voice—the Bar Associations. Speaking collectively through that voice, we can improve the administration of justice, improve public realization of the vital truths of our plan of government, improve the quality of our profession, improve our standing before the bar of public opinion—and for the benefit of the ladies—improve our income.