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NEW FRONTIERS FOR THE LAW AND LAWYERS

CHARLES S. RHYNE*

Speaking before a State Bar convention always is as much a pleasure as it is an honor. If the American Bar Association is the voice of the legal profession, the State Bars are its heart. The activities of State Bars, such as this fine group which I address today, are the clearest evidence to the public and to the legal profession that we lawyers are dedicated to serve. There are many vital services which can be performed only at the State level, and I am happy in the knowledge that our State Bars are functioning magnificently in filling these localized needs.

It always does me good to get back to Wyoming. I once spent almost a year here on a ranch, earning money with which to go on with my college education. I will admit I was somewhat younger then than I am now, but I do not think it was because I was more impressionable at the time that the experiences of that year—hours in the saddle, nights on the trail, mending fences in the blazing sun, good, solid food after hours of toil, looking back on them, rank among my most treasured memories. What happened to me then was another bit of evidence that what we think is a bit of bad luck often is really a blessing in disguise, for if I had not lacked the money to finish school, I never would have had those wonderful experiences.

But the thing which really makes me feel at home is that my wife was a resident of your great State when we first met. The relationships between two persons in a state of marital bliss have been the subject of innumerable comments, both serious and facetious; but I can say in all sincerity that my marriage to Sue was the finest thing that ever happened to me. She was living about 150 miles from here over at Wheatland at the time of our marriage, so you can well understand that coming here is virtually a return to the site of our fondest memories.

Thus, actually, Wyoming has furnished two of the major factors responsible for any success I have experienced: my education and my beloved Sue. I would be a hard man, indeed, if I did not feel real affection for, and great indebtedness to, what I choose to refer to now as "our" Wyoming.

I cannot pass up this opportunity to report on the wonderful contributions being made by the Wyoming members of the ABA House of Delegates. The judgment and opinions of Ed Murane long have been a steady influence on the policies of our Association, and Al Pence already

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has proved himself to be in keeping with the fine traditions of leadership of Wyoming lawyers. And my admiration and affection for the late H. Glenn Kingsley knew no bounds. He was a truly great and outstanding man; he made a great contribution to the advancement of our profession. He is sorely missed in the councils of the American Bar Association.

I spoke of the magnificent functioning of the State Bar groups. Your accomplishments through your State Bar activities are particularly impressive. I recall that you had at least three fine seminars at your last annual meeting over in Sheridan, and that a year ago last February you were host to an Inter-State Bar Council at Cheyenne, attended by representatives of about eleven States. You may rest assured that your fine work has not gone unnoticed throughout the rest of the country.

Today I thought you might like to think with me about the legal profession and the challenge presented to it by the great new scientific, economic and social changes of our day. These great changes have created new tasks for lawyers which go beyond all we have known so far. The challenge of change from these great scientific, economic and social developments is here. And even greater changes are undoubtedly on the way. These changes present a tremendous challenge and grave responsibilities for our profession. Let us list a few of the foreseeable new subjects which will receive the ever-increasing attention of our profession. The increasing use of atomic and nuclear energy is certain to revolutionize many aspects of public utility, tort and public law; it can also be expected to influence the forms of business organization and the relationship among business, government and consumers. For all the progress we have made in the field of nuclear physics, we are still on the verge of ignorance about how to live with the power of the atom. Even today we still catch no more than glimpses of the multiple peacetime uses of atomic energy which are sure to be developed within a few short years.

To move further into the unknown, outer space travel seems to be getting closer and closer, according to the scientists, and it certainly opens up unpredictable problems of international law. The satellite "Vanguard" is to be launched in 1958. At an altitude of 300 miles it will circle the World every 90 minutes. Undreamed of developments in the missile and rocket field, create international legal problems of great gravity. This whole field of upper air and satellite science—called astronics (or electronics as applied to astronautics) is growing at a fantastic pace.

Not too long ago the press carried a story of the prediction of the late Commissioner John Van Neumann of the Atomic Energy Commission that global climate control is now growing ever nearer. He said such control raises the prospect of weather "warfare" and added, "Present awful possibilities of nuclear warfare may give way to others even more awful. After global climate control becomes possible, perhaps all our present involvement will seem simple." We lawyers are directly involved in Commis-

sioner Neumann's further prediction that such developments will bring about "new political forms and procedures" which "will merge each Nation's affairs with those of every other, more thoroughly than the threat of nuclear or any other war may already have done."

American business is looking more and more to foreign markets. Our people are traveling more and more in foreign Nations. There is more and more an exchange of scientific knowledge on a world-wide basis. Certainly the headlines of our major newspapers today generally herald international developments. These developments control our domestic situation more and more. We of the legal profession must take this fact into consideration in our planning for the future.

You know of many other examples which could be added to illustrate the point that in future years we lawyers must adapt the law to unprecedented social, economic and scientific changes; in some cases, indeed, we must be prepared to fashion new laws altogether.

Not a single one of us can escape the consequences of certain actions the world around. We can no longer live in isolation. Almost instant communication is now possible on a world-wide basis. The airplane has shrunk nations to neighborhoods. Due to the airplane, we live in a physically indivisible world. Every spot on earth is within 20 hours of Rawlins. Civilization has produced tools by which men can enter a fratricidal hell or the brotherhood of man. This shrunken world may be a better place in which it is easier for all men to live in peace and prosperity or a place where life is more difficult to preserve than ever before.

While we are the most powerful nation on earth, yet we have only 6% of the world's people and only 7% of the world's territory. Our problem as a people is how to live in peace and prosperity in cooperation with our fellow man, rather than suffer the fate of the world powers of past eras. Our problem as lawyers is to create the legal machinery to achieve that goal.

We lawyers know that the only way to end war as a method of settling international disputes is to provide an effective and acceptable machinery for deciding these disputes peacefully under a rule of law. To do this we must formulate a new system of effective international law—effective because world opinion will back it against any dictator's whims or caprice.

In truth, the choice here is between rule by law or rule by men. Rule by law means an end of war. Rule by men means war can erupt anytime a Napoleon, Hitler or perhaps a Khrushchev decides he needs a war to keep his grip on a captive people. The need for law in the world community is indeed the greatest gap in the legal structure of civilization.

Here we have the major challenge of our era to our legal profession. Here we can make our greatest contribution to a problem which has plagued mankind since the beginning of time: to develop a system of law

in this sensitive area, which will be effective yet preserve essential national sovereignty. We will succeed in developing this system where our predecessors have failed because force or law will rule the world, and military force in this age of the hydrogen bomb is fast becoming an anachronism. The destructive power of modern warfare if unleashed in its full force upon civilization would leave us with no civilization. Modern weapons are capable of destroying all of the progress mankind has made since the stone age. In the evolution of civilization the time has come for a system of law to replace war as the final method of settling international disputes. It is to this problem that ABA's new International Law Planning Committee will direct its attention. It will work with all ABA Sections and Committees in surveying what ABA should and can do to achieve this great objective.

Having thus touched upon the broad picture of the changes and needs of the world today and tomorrow, I invite you to think with me on the answer to the question of whether we as a profession are now equipped to accept the challenge thereby presented.

The November, 1955 issue of *Fortune* magazine contains an article entitled: "Productivity: The Great Age of 3%." Each of you should read it to see what the future holds for us lawyers—at least what some say it holds for us. The article is about productivity in the United States. Productivity is the country's total output measured in terms of national income per man-hour. It reports that during the past century, the country's productivity has been increasing at an average rate of 2% a year. That means that production per man-hour doubles in 35 years. And while the average for the past century has been 2%, the rate has been accelerating. Since 1947 the rate has been close to 3%. If we can hold the 3% rate, production per man-hour will double in 24 years, increase 4 times in 47 years, and 8 times in 71 years. The implications of 3% are staggering.

The national living standard has risen more than 65% in the past 25 years. If the 3% rate holds, the living standard will rise much more during the next quarter-century. And spendable income per average family ought to increase from \$4,400 yearly to some \$8,000—in 1956 dollars—and the average work-week should decline from 41 to about 35 hours.

The article goes into detail about the research that supports these predictions. You should read it. You will enjoy all of it, all but the last part. The article discusses what is ahead for each of the major industries and services. And then the ax falls upon us. I quote:

"There remains in the private economy a large group of professionals like doctors, dentists, lawyers, musicians, entertainers, and social workers, whose productivity, at first glance, seems incapable of very much improvement. *The productivity of lawyers and social workers may be beyond much improvement*, but that of musicians and entertainers has already been multiplied dozens of times by mass media like phonograph records, radio and television,

while that of doctors and dentists has been increased by antibiotics like penicillin, the sulfa drugs, the high-speed dental drills, and the Smith-Peterson nail for setting hip fractures."

That statement about lawyers is down-right frightening: "The productivity of lawyers . . . may be beyond much improvement." If that is true, in a few years we will be financially inferior citizens. Our low rate of out-put will result in low earning-power and inability to meet the challenge of change which is upon us.

According to the implications of the *Fortune* article, while the rest of the population goes on up the economic scale, with the higher standard of living, we lawyers can be expected to fall far behind. I should say, "fall farther behind," because the sad part of it is that we have been falling behind, far behind, for a long time. From 1929 to 1951, the average net earning of non-salaried lawyers—that is, solo practioners and partners—increased 58%. But during those same 22 years, the average net earnings of non-salaried physicians increased 157%, and of all non-farm entrepreneurs increased 144%. Think of that for a moment: from 1929 to 1951 lawyers' incomes increased 58%, but that of doctors increased 157%, and the general average increase in income was 144%. And if, as *Fortune* predicts, there's little hope that we can increase our out-put per lawyer per man-hour, then we better trade our brief-cases for bricklayer's union cards.

But, before any of you leave the hall to get into your work clothes, I hasten to tell you that the picture is not quite as black as I have painted it. Many of us have been lawyers long enough to have lost our awe of statistics. We know how much truth there is in Mark Twain's evaluation of statistics: "there are lies, big lies and then statistics." Those may not be his exact words but they are close enough. It is the trend today, as one writer has put it, "to flyspeck the earth with decimal points and claim that there is nothing worth knowing that can't be proved with a comptometer." This trend is repugnant to us lawyers and rightly so. Our task of protecting the basic rights and freedoms of our people through law cannot be measured in percentages or in dollars and cents. This task cannot be relegated to an unimportant clerical function in our civilization.

The comparison between the tremendously important tasks of our future and this bleak economic picture of our profession today is rather startling, isn't it? It has been made to emphasize the fact that if we are to meet the challenge of change we must first of all put our own house in order. Lawyers cannot carry out their duties of public leadership or their duties to their clients with empty pockets. We must do a real job on the economics of our profession if we are ever to meet our obligations in the modern world. In other words, in an era of change we must change. And the place where the greatest changes are needed are in the way we do our work, in our professional methods and procedures.

It is generally conceded, and emphasized in the *Fortune* article I have

referred to, that lawyers are the most unbusiness-like of all the professions. It is time we put an end to this. A revolution in our professional methods is necessary. Other professions are kept constantly abreast of technological developments in their fields; their members receive from the professional organizations a constant stream of information on how they can improve their business methods and their economic status. Yet, we lawyers go along merrily using "horse and buggy" methods in this "jet" age.

The American Bar Association intends to correct this situation and aid all lawyers to modernize their methods of law practice. Last month in London it created a Committee on Law Practice Economics to pull together the aids to lawyers already developed by ABA Sections and Committees and to develop a program to increase and expand these. One of the great leaders of the organized Bar, John C. Satterfield of Jackson, Mississippi, is Chairman of this important new Committee. This will be a service to all lawyers, and it should end forever the erroneous claim that ABA does not serve the so-called "grass roots" lawyer. ABA serves, but its services are just not sufficiently publicized. You will be hearing and reading a lot about these services as this Committee gets its program underway.

ABA has doubled its membership, erected a great new headquarters building, completed a survey of the legal profession and created a most successful law student association. Through the American Bar Foundation and the American Bar Endowment, the legal profession is now equipped with new aids in carrying out the profession's ever-growing duties and responsibilities. Never before has our Association been better organized to live up to those duties and those responsibilities.

Lawyers have not changed their methods of research to an appreciable extent for the past 50 years. There must be a new and modern way of going through the mechanics of searching for cases. No two fingerprints in the whole world are exactly alike, yet the FBI has machines that can select one from several hundred thousand in a matter of seconds. Large industries can select one from several thousand employees and give you his employment history in a matter of minutes through the use of IBM cards. Surely, the ingenuity of man can also produce a machine whereby cards citing all cases involving a particular legal or factual point would be disgorged if one simply pushed the buttons covering desired points. This is not a suggestion that we have "push button justice." But I suggest that a modern mechanization of our indexes to legal materials and methods of research is badly needed. Such mechanization can never be a substitute for personal judgment and capacity in utilizing the results of the material thus obtained; the human element can never be eliminated, as you well know. But mechanization would give lawyers time to think rather than spend so many of their productive hours in the mechanics of research.

In the *Challenge of Law Reform*, a recent book by the late Chief Justice Arthur T. Vanderbilt, he states that reported American Court Decisions are

increasing at the rate of 22,000 per month and in total they exceed 2,100,000. In one year he reports that our legislatures enacted 29,938 new statutes, adding these to 931 bulky volumes of existing statutory law. Add to this Federal agency decisions and the vast jungle of Federal agency rulings and regulations. There are 41 volumes of the Code of Federal Regulations totalling 21,000 pages, with annual supplements adding thousands of pages more. And the actual annual page volume of Federal agency decisions far outstrips all decisions of all Federal Courts combined.

We do not have and we need critically—a uniform scientific scheme for indexing this whole mass of legal materials so we lawyers can find our way around in this vast wilderness as well as save time in research. Mechanization of our index and research methods certainly seems to offer one answer.

This mechanization idea is, of course, way out in the forefront of creative thinking and may require many years for progress. The new committee will also deal with the economic problems of our profession in a down-to-earth current manner. It is expected to develop law office management information pamphlets, information services on legal materials, studies on the advantages and disadvantages of law partnerships, prepare material on how to arrive at reasonable and proper legal fees, and to, in fact, cover the whole of law practice and its problems. It will also release or focus attention upon articles by experts on how to try various kinds of law suits and develop information on the latest developments in various new fields of law. In the main the latter type of material will, in fact, be a reference to work of the ABA Sections and reports of ABA Committees, as no duplication of effort is envisioned. But today Sections and Committees do outstanding work in this field which is not made known to the membership at large.

The American Bar Association is determined to convince all lawyers that it is indeed serving their interests. We are sponsoring the Jenkins-Keogh retirement income legislation for the self-employed. We are backing legislation to give lawyers in public service the increased status and higher compensation which their important duties and responsibilities warrant. We are battling to end discrimination against lawyers in the armed services. We have life insurance programs for our members that give them the cheapest rates available to lawyers. But I shall not dwell on these and our other services to lawyers as they are, or should be, well known to you all as advantages that flow from ABA membership. I hope you will talk about them to all lawyers, however, and help us secure their membership and support. The more members we have the greater our ABA services can grow.

The velocity of change in our civilization is greater than in any previous era. We must conquer our inhibitions against change in our professional methods and procedures and help solve the difficult problems which exist for us.

Out on the frontiers of law there are problems as vast and uncharted as were the wilds of the frontiers of the old West. These problems are, nevertheless, just as real and as difficult to lick as were the problems of crossing the great plains and finding one's way through the great wilderness before the days of maps to chart the way. Our big problem is to develop a map for the road ahead for law to meet the challenge of our day and tomorrow. We in the American Bar Association, through our Sections and Committees are doing just that. Many of you are already assisting in that task, but we need the help of all of you. Each of you has a tremendous stake in assuring the success of this important work and I earnestly ask for your assistance.

My suggestions here today are but a few thoughts on plans for the path of progress we must follow in this era of dynamic economic progress—of great scientific, economic and social changes. You can, no doubt, add many thoughts of your own. But in our efforts to keep pace we must never sacrifice any of the great traditions of our profession. At times the law has had to act as a needed brake on the forward rush of civilization. We lawyers have made sure that our society has always consisted of more than a mere mass—we have made sure that it consists of the man, the individual man and his rights and freedoms. Ours is a high calling that can never be reduced to a clerical trade in the commercial market place of mankind. With these principles ever before us, any step we find necessary we must take only when we are sure that it is a step forward, a step to be made with the honor and dignity befitting our profession, a step in keeping with the high ideals and objectives that are our heritage.

This careful balance between progress and time-tested methods is a problem that has always been with us. It has never been more acute than at present. But I believe that even with all of the problems we must solve, never has the road ahead been so promising. Never has our profession been so alert to its problems or so anxious to solve them. And under these circumstances, I believe that we will succeed.

We now have an obligation to our country, our profession, and ourselves, to step out on the path of progress and accept the challenge of change. For in a strong legal profession lies the liberty of the people of the United States, and in the liberty of our people lies the hope of the world.