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President's Annual Address

Milo N. Feightner
Indiana State Bar Association

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PRESIDENT'S ANNUAL ADDRESS

MILO N. FEIGHTNER*

The by-laws and precedent require that the President of this Association at the annual meeting held each year give an account of things considered during the year by the Association and the things accomplished and the things to be considered in the future. No legislature convened during the year just past and hence the activities of the Association were somewhat curtailed, but that did not mean that things were not contemplated to be put before the legislature that meets in 1941.

There was a splendid increase in membership during the year and the Association owes the Chairman and the members of the Membership Committee a debt of gratitude for their fine work. The membership during the year has been increased by more than 250, so that the Association now includes nearly one-half of all the lawyers in the state.

The activities of some of the committees appointed by me have not been what I hoped for, but on the whole the committees have done good work and some have exceeded my expectations. It is my opinion that when one is appointed to a committee of this Association, if he does not desire to serve, he should make that fact known to the President of the Association immediately so that another can be appointed in his stead. I believe I voice the sentiment of the Associa-

* The President's address delivered at the annual meeting of the Indiana State Bar Association at Fort Wayne, August 24, 1940.

tion when I say that each member who is appointed to a committee owes it to the Association to give the best that is in him in discharging his duties.

FORT WAYNE COOPERATION IN BRINGING ABOUT THIS MEETING

After it was determined that this meeting was to be held in Fort Wayne, I appointed a committee of Fort Wayne lawyers to act with me in arranging for this meeting. I am pleased to say to you that the Fort Wayne lawyers headed by this committee worked actively in arranging for this meeting and cooperated with me in a most satisfactory manner. I am inclined to think that if every county seat had an association of lawyers such as Fort Wayne has—and I am not speaking words of flattery—that that community would be a better community and that they would have an administration of justice there that might well be followed by other places to the end that there would be a happier community and a far better standard of jurisprudence. The lawyers of Fort Wayne may well be proud of their community and of the good work that they are doing through their local Association and the good work they are doing in advancing the interests of the Indiana State Bar Association.

A LAWYER'S PLACE IN THE COMMUNITY

A lawyer's life now is cast in a world of strained conditions. There are wars and rumors of wars and at this time we do not know what the future has in store for the American people, and neither do we know what the future means to the world at large. There is turmoil and strife and contention beyond the sea; governments are falling; the administration of justice is passing into the hands of dictators; and totalitarian governments seem to be the rule. Jurisprudence is ignored and the will of one, in many instances, is imposed upon all the people of a nation. Totalitarian governments are abhorrent to the people of our country who have developed a science of jurisprudence to their own liking. Totalitarian government can never be imposed upon the American people, but this brief survey of conditions beyond the sea leads me to the notion that lawyers must take a greater part in the affairs of government. History gives us

precedents of the lawyers' activities in trying times of the past.

My mind goes back to pre-revolutionary days when men—honorable and God-fearing men—like Samuel Adams, James Otis, Patrick Henry, John Jay, Alexander Hamilton gave the best that was in them to establish a democracy in our country, a democracy that has been the pride not only of our own people for more than a century and a half, but a pattern for other nations as well.

The Declaration of Independence was signed by 26 lawyers out of the 56 who signed, and the Constitution of the United States was signed by 24 lawyers out of the 39 who signed the instrument. It is not necessary for me to remind you of the great legal minds who, after our government was established, took the lead in developing the government of this country and in interpreting its constitution and statutes. In these trying times, the lawyers of this country may well look to such men as John Marshall, Alexander Hamilton, Luther Martin, William Wirt, James Madison and Daniel Webster, who did so much to establish our government on a firm constitutional basis. I mention this because of the present situation in which lawyers in this country find themselves, and I repeat that the lawyers must take a more active part in the affairs of our government.

LAWYERS AND GREAT EVENTS

When the war of 1812 was fought the President of our country then in office was James Madison, a lawyer; when the Mexican war was fought James K. Polk, a lawyer, was the President of the United States; during the Civil War Abraham Lincoln, a lawyer, was President; during the war with Spain William McKinley, a lawyer, was President; during the first World War Woodrow Wilson, a lawyer, was President. A majority of all the Presidents of the United States were lawyers and it was the lawyers who took the lead in the several state conventions called to adopt the Constitution of the United States. It was through their untiring efforts that the Constitution was adopted by the required number of states.

MEMBERSHIP IN BAR ASSOCIATIONS

If lawyers are to hold the influence which they had through the growth of our country, they must give a part of their time to matters of government. They must consider at all times the state of the Union. That lawyers can do effectively only by and through membership in bar associations.

My mind goes back to the beginning of the American Bar Association. In 1876 seventy-eight lawyers of the United States met at Saratoga, New York, to form an association of lawyers for the United States. Elihu Root, that great legal mind, was present and took an active part in forming the Association. The Secretary chosen at that meeting was one Rawle, who graced that office and the Association for many years after it was organized. I remember meeting him at different times at the Association meetings of the American Bar and at different places in the United States up until a few years ago. He lived in Philadelphia and led an active life there for many years. That Association has grown from a membership of 78 to approximately 35,000, and has been one of the greatest forces in our country to bring about a higher standard of jurisprudence and a better administration of justice. Let me say to you, each and all, that membership in the American Bar Association is well worth the while and the expense to any lawyer, and any lawyer who belongs to that organization will find himself a better lawyer after each year of membership.

INDIANA BAR ASSOCIATION

In 1896 the Indiana Bar Association was formed at Indianapolis. Benjamin Harrison, one-time President of the United States, was its first President. I cannot give you the exact membership when the Association was formed, but it was not great. The Association has grown, as did the American Bar Association, from a humble beginning to its present position of influence and merit in our state.

All but three counties of the State of Indiana have local Bar Associations and we have several District Associations. These Associations, like the American Bar Association, are a power for good in our state, and it is my humble opinion that no lawyer in the state of Indiana looking forward to a future of worthwhile activity in his chosen profession can afford to remain outside the local Association of his county,

and the District Association if he lives in a district where there is an Association, and outside the membership of the State Association.

LAWYERS OF THE PAST

Let me remind you that lawyers in the past have not always been leaders of public opinion. Lawyers have been criticized, have been opposed, and in some instances drastic measures have been taken to curtail their influence. I might call to your attention that in the fourteenth century when Jack Straw led a mob against the City of London, that his cry and the cry of his followers was: "Let us kill all the lawyers."

I am informed that when the Constitutional Convention met in the State of Kentucky to draw up a Constitution for that state that a resolution was offered providing that there should be no lawyers at any time in the state. I have known men—and you have known men—who would not vote for a lawyer to go to the legislature, and I have known men—and you, no doubt, have known men—who have voted for candidates for the position of judge who were not lawyers. I have known people—and you have known people—who are opposed to measures advocated by lawyers simply because it was a lawyer's measure and the opposition was with utter disregard of the merits of the measure. These conditions should not exist.

When I think of lawyers who are useful to their country, and especially in the community where they live, I think of those stalwart and capable lawyers who appeared in the cases of *Marbury vs. Madison*, *McCulloch vs. Maryland*, *Dred Scott Case*, *Green Back* (legal tender) cases. In making such references I may well say that they were giants in their day, and while we give great credit and laud the lawyers who practiced in the early history of our country, I want to say that I believe that in recent years this country has produced lawyers as great as those of the past. I call your attention to the names of Holmes, Cardoza, Brandeis and Hughes, and I am made to think when I mention these names—leaders at the bar—that a democracy is safe when its laws are interpreted by a Supreme Court.

CRITICISM OF THE SUPREME COURT

It has been said recently that we have too many teachers of law who have been elevated to the bench, that teachers of law are impractical, that they are theorists and not in touch with conditions. Let me remind you of the following: Justice Story was a teacher of law fifteen years after his appointment to the supreme bench.

Justice Holmes was a teacher for five years in Harvard University and then went to the Supreme Court of Massachusetts, and then to the United States Supreme Court.

Chief Justice Taft was dean of a law school at Cincinnati for five years, then teacher at Yale.

Justice Stone was a teacher for thirteen years at Columbia University before he was elevated to the United States Supreme Court.

Justice Frankfurter taught at Harvard for sometime before he was appointed to the Supreme Court.

Justice Douglas taught at Yale Law School before his appointment to the Supreme Court of the United States.

I believe these criticisms against teachers of law being elevated to the bench are wholly without merit and I believe—and I am sure you will agree with me—that the Supreme Court of the United States has always fulfilled the aims and purposes of the founders of our Government, and I firmly believe that it always will.

A FLEXIBLE CONSTITUTION

Senator Borah, a short time before his death, in referring to the Constitution of the United States used this language; "Our Constitution is a flexible constitution and it can be adapted to any condition affecting the welfare of the people." I believe in that statement and I believe that each one of you believes in that statement, especially when our Constitution is being interpreted by the great master minds of the legal profession.

When our Constitution was adopted it was for the government of four million people; it is now a Constitution for more than 130 million people, and as our population increases it will throw its protecting arms around the people of our country, however numerous they may be. As religious tenets have changed through the centuries responding to changed

conditions and a more enlightened understanding, so must our Constitution respond to changed conditions and a more enlightened understanding.

At a recent meeting of the American Bar Association a speaker of eminence quoted the following from a letter written by Thomas Jefferson shortly before his death:

“Some men look at constitutions with sanctimonious reverence and deem them like the Ark of the Covenant—too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human and suppose what they did to be beyond amendment. I am certainly not an advocate for frequent and untried changes in laws and constitutions. I think moderate imperfections had better be borne with, but I also know that laws and institutions must go hand in hand with the operations of the human mind. As new discoveries are made, new truths disclosed and manners and opinions change with the change of circumstances institutions must advance also and keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy as to expect civilized society to remain under the regiment of their barbarous ancestors. Each generation has the right to choose for itself the form of government it believes the most formative of its happiness. A solemn opportunity of doing this every nineteen or twenty years should be provided by the Constitution.”

I would not go as far as this statement goes. I mention it merely to call to your attention as has often been done, that a constitution is not a static instrument, but that it is subject to interpretation and expansion by interpretation. Let me go further on what I have just said and quote again from this speaker at the American Bar Association, where he used this language:

“I am not suggesting that change in Constitutional Doctrine is desirable for its own sake, neither am I advocating any changes which are capricious and lacking in reason, but I think the danger of such changes is illusory so long as the courts adhere to the practice of rendering special opinions to justify their decisions and also expose themselves to the critical barrage of dissenting opinion. This practice gives assurance that the changes in our constitutional law are founded on a theory, as Justice Brandeis put it,—to the lessons of experience and the force of better reasoning.”

PROFESSIONAL ETHICS

It is my opinion that professional ethics should have a more prominent place in the course of study in our law schools. The young lawyer goes out into the world to practice his profession and he finds the profession crowded. It is a struggle with him for an existence and the young lawyer finds it very difficult going. I sometimes think that the law of the survival of the fittest applies to a young lawyer when he begins to practice, and yet I know that some lawyers of ability when they start their profession find themselves greatly handicapped because of lack of opportunities. This, of course, leads young lawyers into temptation. Sometimes they submit to temptation and ruin their careers early in life. That should not be. The young lawyer must meet the conditions of his time and face them bravely and ever keep in mind that there are rules of conduct which he must observe, even though he may find the going in his profession very hard.

I think the schools of law should, among other things, impress on the young lawyer, his proper attitude towards the courts and that he should not exert a personal influence on the court, even if he have the opportunity. I think a young lawyer should be taught that he should accept employment from an indigent when he feels that that person should be represented by counsel even though he may know that that person can not compensate him. I think that a young lawyer should be taught to avoid conflicting interests and not to take employment from any one where a former employment has acquainted him with matters of concern in the present employment and adverse to his former client's interests.

I think a young lawyer should be taught that he should not appear as a witness in his client's case and that he should avoid newspaper discussions of his case, that he should avoid advertising, ambulance chasing and other conduct which today the various Bar Associations condemn as unprofessional conduct. A young lawyer should keep in mind that his reputation as an honest lawyer is one of the greatest assets that he has in his practice and that that reputation will bring him business. I think that the highest aim of every young lawyer should be to be ever mindful that he is an officer of the court and an aid to the court in the administration of justice and ever mindful that it is not the duty of a lawyer

to win his client's cause by trick or subterfuge, or, in other language, by outsmarting his adversary; that a lawyer's highest duty is to so conduct himself as to further peace and order in society.

I repeat as I began. The future of our country depends upon the leadership of the Bar. The leadership of the Bar depends upon the confidence of the people in the profession; and the profession will have that confidence only if the profession deserves it. To deserve it, we must clean house. We must drive from the profession those who abuse its privileges; and we must set up and enforce standards which will make membership therein a guaranty of probity and a recognized dedication to the public service.

ADMISSION TO BAR

Under the rules for admission to the Bar adopted July 1931, no qualifications were required of an applicant, save and except that he prove his moral fitness to be a lawyer. In the month of June 1936, these rules were changed and an applicant must now show that he has had college training and legal training,—a college training for two years and legal training for three years. Under the old rules more than 500 applicants were rejected; that is, they did not pass the examination under the first rules. Under the present rules approximately 175 applicants pass each year. The rules now provide that an applicant who has failed in the bar examination may appeal to a Board of Review composed of the four deans of the accredited law schools of the state, and I think that is a very wholesome rule. It is my judgment that under our present rules we are getting a fine lot of young lawyers in the State of Indiana and lawyers who will ever grace the Bar of Indiana. And I want to say in this connection that the Supreme Court of the State of Indiana from the inception of the present method of admitting to the Bar has done a fine work in making rules and working with the Board of Examiners to bring about a better bar in the State of Indiana.

INTEGRATED BAR

An integrated bar is one of the absorbing matters of the Bar of Indiana. There is much misunderstanding about the aims and purposes of an integrated bar. I think if these misunderstandings could be worked out that Indiana

would fall in line with the twenty-three states who now have an integrated bar and then we would wonder why we had not adopted the measure long ago.

My understanding of an integrated bar is that it is a bar governed by rules of the Supreme Court; that is, either promulgated by the Supreme Court on its initiative or rules submitted by the Bar of the State and approved by the Supreme Court. The authority for an integrated bar is the exercise of the right of the Supreme Court to function as the judicial department of our state government.

My idea is that the judicial department of our state government has the right to provide for an integrated bar without legislative sanction. It is the inherent right of the Supreme Court to control the Bar of the State and to provide and make rules for the administration of justice.

With an integrated bar the State of Indiana will have a bar that stands for high standards for admission to the bar; it will have a bar that will have greater respect for the courts and in turn a greater respect on the part of the public for lawyers; it will have a bar that will be protected from the unauthorized practice of the law and lastly but not least, the State of Indiana will have a bar that can control and discipline its own members.

It seems strange to me that with this effort to bring about a better bar in the State of Indiana, that others not of the profession say "you can't do it." It seems to me that when the bar of the State of Indiana seeks to improve the administration of justice, it should have its way. I am of the firm opinion that the majority of the lawyers of the State of Indiana want an integrated bar and I am also of the firm opinion that with an integrated bar we will have a better administration of justice in the State of Indiana.

SELECTION OF JUDGES

Under the first Constitution of the State of Indiana the judges of the courts were not elected, but were appointed. Now, as we all know, judges are elected by political parties. This method of selection, in my judgment, is becoming unpopular with the people of this state. Other states, and especially states in the East, have for many years selected judges either through appointment by the Governor of the State or by the Governor and a non-partisan board, or by

the people without any regard to politics. I know there are those in Indiana who would not be willing to get away from the present system of selecting the judges of our courts, but it seems to me that in this progressive age, the better system is one where politics does not enter into the selection of the judges. A judge is selected impartially to administer justice. I cannot understand why his political views should be taken into consideration in his selection. I believe in long terms for judges, and if efficient and capable, I think they should be retained on the bench regardless of their political views.

I have talked to some lawyers from states where judges are selected regardless of politics, and they wonder why some of the states hold to the old plan which, in the judgment of these lawyers, is archaic. I believe that in the not far distant future, all of the states will select their judges, not because of political affiliation, but because of fitness and training for the position.

I have talked to no one who lives in a state where judges are selected without regard to politics who wants to return to the old system. You will recall the article in the Indiana Law Journal of February of this year where the method of selecting judges in 42 of our states was set out. If the lawyers of Indiana would study the methods of selecting judges in some of the states as set out in that article and learn how the system works, they would be ready and willing to make a change in the method of selecting judges in our state.

I do not mean to infer that the judges of the State of Indiana in any of our courts are incapable, unfair or corrupt, but I do mean this,—that Indiana would have on the bench a better trained judiciary, if men were selected because of ability and fitness and with the knowledge that their position was not at stake every six years, as under our present system.

**BILL FOR SELECTION OF JUDGES PREPARED
BY JUDICIAL COUNCIL**

A bill, prepared by the Judicial Council, will be introduced in our next legislature. This bill will permit the people of the State of Indiana to select their judges without regard to politics. I commend this Bill to your careful consideration in the hope that Indiana will fall in line with the trend of public sentiment on the selection of judges.

INDIANA BAR JOURNAL

Alfred Evens, editor of the Indiana Bar Journal, will retire from that position in the month of September. Mr. Evens has ably edited the Indiana Bar Journal and he deserves the praise of this Association for the efficient way that he has edited this Journal.

The Indiana Bar Journal should reach every lawyer in the State of Indiana and I believe that a lawyer is a better lawyer by keeping in touch with the Journal. The Journal will be published, as heretofore, at Bloomington. I believe that the new editor will continue to maintain the high standards of the Journal and that you will feel that the Journal is still in able hands and that it is a worthwhile publication.

AMERICAN CITIZENSHIP

I want to congratulate the Committee on American Citizenship for the interest it has taken in its work. Its report to this Association has been pleasing to me and I believe of interest to every member. The things set out in that report challenge the attention of every lawyer in the State of Indiana.

A survey of our people shows that there are some within our midst who are in sympathy with the despotic governments of foreign countries and who are bent on the destruction of democracies wherever they exist. The activities of some of the organizations have an especial appeal to the youth of our land and I am sure that it is regretted by every well-thinking person that young people in some parts of our country are impressed with doctrines which are fatal to democracy.

If the efforts now partially successful in European countries to destroy democracy are not stopped in the near future then Democracy must accept the challenge to its right to exist.

The government of our ancestors made possible by our pioneer forefathers on the field of battle at Saratoga, Brandywine and Yorktown must again assert itself, else perish and civilization return to the dark ages where dictatorship was supreme and government by the people, for the people and of the people was unknown.

The people of our country must have an aroused public sentiment; democracy is in danger; the peril is apparent and

Democracy will fail unless a belligerent people arouse themselves. We need George Washingtons, John Hancocks, Samuel Adamses, Patrick Henrys and Thomas Jeffersons as never before since July 4, 1776.

The challenge to democracy calls for a more patriotic citizenship. The Bar of our nation, and the schools and the churches must assume the leaderships necessary to create a citizenry ready and willing to defend our democratic form of government.

A BETTER BAR, A BETTER CIVILIZATION

In times like the present the lawyers must assume greater public responsibility. I return to the thought expressed in the beginning. When governments are falling, when minority groups are being destroyed, when democracies are challenged, the Bar of our country must assume the leadership. In assuming this leadership each lawyer must rise to the supreme heights of his profession.

When the American Bar Association met at Detroit in 1925, Lord Buckmaster, one time Lord Chancellor of England, addressed the Association and gave the following definition of a lawyer:

“Believe me it is a profound mistake to think that a lawyer is a man who by any device is to secure victory in the law courts for his clients. The man who stoops to baseness for the purpose of winning his cause is a disgrace to the profession. Every man down to the youngest junior ought to remember that he in his small degree is assisting in something more than merely settling a quarrel between two people. He is a minister of justice and he is bound to demean and to behave himself, having due regard for the great dignity of the calling which he has taken up. What are the qualities he should possess? He should have a sense of honor, without which our profession becomes the basest of all harlotries, for it is the prostitution of the intellect. He should have courage undefeated and faith undefiled and he should be ready to ignore at once all popular applause or popular abuse. He should remember that when the sound of public approval tickles the ears of any man, whether a judge upon the bench or a counsel at the bar; when he is flattered by the passing breath of popular favor, the administration of justice at once becomes in grave danger.”

Later and in concluding his learned address the former Lord Chancellor paid this eloquent tribute to the legal profession:

“Suppose we look back through the pages of history and glance for a moment down the vast corridors of time. What is it that we see? Race succeeds race, and dynasty follows dynasty like shadow pictures on a moving film; conquerors with their great armies fill for the moment the spotlight, to be followed by line after line of captives in chains, by women sitting with bowed heads weeping by the blackened ashes of their homes and crying: ‘Give me back my dead!’, by the spectres of famine and disease and all the havoc and the horror that always has and forever will follow the panoply and pomp of war. The painted glory of kings and emperors brightens for a moment the passing show, and they, too, pass away. Out of the darkness into the light, and out of the light back to the darkness again. Is there then nothing in all this mutability of things that can stand secure? Is there no single true ideal that makes life worth the living through? My answer is, “Yes.” There is the spirit and the conception of justice, and it lies with us to see that it shall be preserved and shall remain, though the civilizations as we know them today shall crumble into dust and the great cities of the earth return once more to the waste places from which they sprang. To the Romans justice was a goddess, and surely she may without treason to our faith remain a goddess still, the goddess, whose symbols are known to all, a throne that tempests cannot shake, a pulse that passion cannot stir, eyes that are blind to all feelings of favor or ill-will, and the sword that falls on all offenders with equal certainty and with impartial strength. This then is she to whose service we are sworn and in the temple that holds her shrine all those who know the English common law and speak the English tongue can gather together as one congregation and worship side by side.”

Can the bar of the State of Indiana accept the challenge of that eloquent speaker? Can it accept the true role of a lawyer, whole-heartedly and with enthusiasm? Can it in the not far distant future merit the tribute paid by the former Lord Chancellor to the profession of the law and the administration of justice? I believe it can be done.