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*American Bar Association*

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## OBJECTIVES OF THE AMERICAN BAR ASSOCIATION FOR THE YEAR 1938-39

By FRANK J. HOGAN\*

Going about the country during the next ten months I intend to press upon the attention of the American lawyer as the first objective the improvement in the methods for the administration of justice, as definitely, clearly and with admirable conciseness, recommended by the judicial section of the American Bar Association at its recent meeting held in Cleveland. It is gratifying to know that you, too, have adopted this objective as an important feature in the program of your association.

I will come back to that in a minute. The second objective which I will pass on to the attention of lawyers—I notice you are already giving attention to that also—is the selection of the members of the Judiciary on the basis of fitness and on that basis alone.

Something should be said for the judges who are thus selected. Not only should their selection be on the basis of fitness, but there should be provided for our judges adequate tenures, ample compensation, specified retirement privileges, and the aid and assistance of an efficient administrative staff—

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\* Address of Hon. Frank J. Hogan, President of the American Bar Association, at the Annual Meeting of the Indiana State Bar Association, September 17, 1938.

to the end that the fit might aspire to and be in a position to afford to accept judicial selection.

The third of the objectives that I will call to your attention is a recognition of the inevitable fact that administrative law and administrative tribunals have come to stay. They are not going to diminish; they are going to increase, both in the state and nation, and particularly in the federal field. This fact has been recognized and emphasized by your incoming president. It is gratifying to find that the American Bar Association and your Association are working harmoniously in this important field. It is of prime importance to us to see that by legislation and regulation there is provided open public hearings by administrative tribunals, with a record made of evidence adduced and facts found, accompanied by open public appellate review by a tribunal or tribunals whose position, method of selection and qualifications will be such as to give to its or their decisions the same public confidence that traditionally and customarily the people accord to the decisions of our courts.

The next of the objectives is the extension of legal aid work, particularly in large cities, because in small places every lawyer takes care of that for his neighbors. Legal aid work must be extended to the end that it may never be truthfully said that hereafter any man or woman will have justice denied to him or her because of financial inability to hire a lawyer.

The fifth of the objectives I am pressing upon the attention of the American lawyer is defense of and protection of the rights guaranteed by the Bill of Rights of the Federal Constitution, and constitutions of the several states.

That is a not too broad program, is it? Does it not need—does it not merit the earnest attention of my fellow lawyers everywhere? The American Bar Association can do nothing by remote control. It would not even attempt it, and I am glad indeed to find that in this organization you intend to give attention to at least four of those five objectives, through committees. What is everybody's business is still nobody's business. Interested, industrious, expert committees who will pay attention to these things, recognize the needs and work

for improvements are the only means whereby we can get anywhere with any or all of them.

May I beg of you to give attention, through your committees, and you, my brethren, individually, to the report submitted to the American Bar Association last year when Judge Parker was its chairman, on methods for the improvement of the administration of justice, procedural reform, as it might be called in two words. Standards are set up in those reports which are so clear and so high and yet so attainable; so certain to do away with the time-worn, age-long but nevertheless just complaint against the delays of the law, and the slowness of justice. While some of the recommendations may not be fitting to your local conditions, on the whole, they provide a design along which, with the rule-making power that your courts in Indiana have, there can be built up improvements in the courts of justice. These recommendations, if conscientiously and intelligently applied to our system of legal procedure, will go far to remove the cause for complaints, if not the actual complaints, of those who lead the hue and cry against the law's delays.

I think I might say to you offhand that when I heard a speech recently on the law's delay, I was impressed with the fact that the speaker thought he was talking about something new, and there ran in my mind that Shakespeare had given to Hamlet as one of the justifications for suicide the law's delay. That appeared in 1601.

I called in a young man from my library, and asked him to go to the Library of Congress and trace back the first reference that he could find, complaining against the law's delay, or slowness, and bring it down to date. A few days later, very tired-looking, he came to me and said, "How far back do you want to go?"

I said, "How far back have you gone?"

He said, "560 B. C."

I said, "That is far enough for me."

We can't do anything, I repeat, except with your help. Next week, in your state, I shall appoint an American Bar Association committee representative of your state and your

Bar Association, and ask that, in connection with your committee, that American Bar Association committee in your state, make a study of your state condition, where legislation is necessary (and here to a large extent it ought not to be at all necessary), and definitely, intelligently, industriously seek it. It can be Indiana-implemented, largely, if not entirely, to the extent that it fits your needs by the exercise of the rule-making power of your Supreme Court. Then for your committees, your association, your lawyers in this state to take what is usable here, from the standards set up, by the Judicial Section of the American Bar Association, and not ask the judges to do the work. If none of them are here, I will say it is very difficult in most places I go to get them to do it. Do it for them. They have a right to expect that from the bar, just as they have a right to expect the bar to be real aids to their work. Present to them definitely, already drafted, those of the rules that you think will improve the situation in your state, and take it before the court. Then with all the power that ought to be behind your bar and bar association, put it through.

I beg of you to see that that thing is done. Make a study of federal judicial rules. It took us, the American Bar Association, twenty-six years to get first the rule-making power restored by Congress to the Supreme Court, and then to get a set of rules that are today so clear that it has been said by higher authority that you don't really need a certificate of admission to the bar (I remember once in Indiana it wasn't hard to get)—in order to conduct a case in the federal courts.

I saw the other day an advertisement of a book that would give you an authentic interpretation of these 80 rules, three volumes, and cost only \$25.

Chief Justice Hughes lives across the street from me—I might say I live across the street from him, but, after all, he is only Chief Justice, and I am President of the American Bar Association. I am going to go across some day and tell him if it requires that much interpretation before the rules have gone into effect, he has made a terrible mistake, and I will be in favor of “packing” it.

Now, I come to the last of the text that I take from your new President's address. That is, a reference to the standing of the members of the bar. I am not one of those who think of law as a necessary evil, or believe that the men and women who practice it have lost the confidence of the people, either as public leaders or private advisers. On the contrary, I think that law in its last analysis is nothing but the result of human wisdom gathered from human experience for the benefit of the public. I look upon the practice of law as an opportunity for public service. I consider it—and I hope you do, too—a fine thing to be numbered among the men and women of your state and nation to whom that opportunity has been given.

I say that despite the fact I am well aware, as your President has called your attention to, that lawyer-smearing is an ancient pastime, and that, like bicycle-riding, it has recently endeavored to stage a healthy comeback. I am not surprised when misled politicians and cynical philosophers take a fling at us, but I have been to some bar association meetings when you would think that the lawyer, instead of being proud, ought to greatly regret his calling; that the smearing ought not to be done by the misled politicians, but ought to be done by bar association speakers. I was so glad to hear you make today a distinction which ought to be made. There are, of course, a few, measured by the whole, a remarkably few, shysters and tricksters and racketeers among us; but they do not smirch the whole bar any more than a quack ruins the standing of the medical profession, or one man, forgetting his vows and turning into immorality, should drag into the gutter the clergy and make him ashamed of the cloth.

I am so glad that statement was made. Because of all the things that have gotten in here (pointing to his throat)—that have made a lump in my throat and have got me sputtering instead of talking—the number one cause is the chorus I find sung by some bar associations and lawyers aping the newspapers who criticized us; the motion pictures who misrepresent us; the radio wise-cracker who seeks to make fun of us; or the politicians who seek to make political capital by denounc-

ing us, as was attempted in Kentucky when they sought to abolish us. I hang my head in shame when I meet a lawyer who thinks he ought to apologize for being a member of our profession instead of singing hosannas that he is so privileged.

Is it not true that in spite of all the wise-cracks, the alleged wit, the splenetic attacks aimed at the lawyer, he has survived, and that what is more, he continues to be the minister of public justice, the defender of private rights, the confidential adviser on the most sacred things of life, the unbounded fiduciary of a thousand trusts?

I am going to repeat here—in fact, I scratched on a card, but I don't need it now—some facts and figures that I endeavored to bring to the attention of the bar and public some time ago, but which I so lamentably failed in getting any attention for that even the Attorney-General of the United States recently showed he had not learned them or had entirely overlooked them.

A little while ago a distinguished justice of the Supreme Court of the United States in an address delivered before the graduating class of a great law school, expressed his regret and publicly deplored the lost leadership of our profession in public affairs. He said that there was no tradition among American lawyers so prized as the part that the profession took in the founding of our government, and the setting up of our judicial systems, state and national. But, he added, while this tradition is a very sacred one, even those among us who have the greatest confidence in the future of our profession, can not but recognize and deplore that our leadership had been lost, certainly in public affairs, and that it has been lost as a result of the loss of the confidence of the people.

“Candor compels,” said the Justice, “that we recognize that there are not as many lawyers in legislative halls and in public executive and administrative posts now as in the earlier days of the Republic.”

That very great judge added, “Facts are stubborn and revealing things, and lawyers might as well recognize the facts.”

I agree with him that facts are “stubborn and revealing.”

In a very gracious address, given by Attorney-General Cummings at an informal dinner in Cleveland last month, he fervently and with a sincerity that no one could doubt, prayed that "that day was not far distant when the American lawyer would recapture (get that word, "recapture") the confidence of the people and the public leadership that were once his."

Speaking at the same board, I said to Attorney-General Cummings that if instead of using the word "recapture", he had used the word "maintain", and had left off the last few words of his sentence, I would join him with uplifted hands and eyes in sending his prayer on high.

What are the facts? The "stubborn and revealing facts," respecting the confidence or lack of it of the people, the choice or failure to choose lawyers for places of public leadership?

My friends, the uncontradictable records show that this profession has not lost the confidence of the people, and that there are not fewer lawyers in places of public leadership as a result of the choice of the people today than there were in the earlier days, but actually are a great many more, both in numbers and percentage. The "stubborn and revealing facts", and not loose and general statements, bear out the statement I have just made.

What are the offices of leadership that the public, the people, choose? And have not we the right to believe that if the people choose us, they haven't lost confidence?

In the present Senate of the United States 71 of the total of 96 members are lawyers. Now, in the House of Representatives, 257 of the 435 Congressmen are lawyers.

Now, in other words, in the Senate, 74%, in the House, 58%, in the United States Congress 62%, are members of our profession right now, and that is the largest percentage of lawyers in the halls of legislature at any time since the Constitution was adopted.

Is that the way the people show that they will not give us public leadership, and is the possession of public leadership uncontradictable evidence of its loss?

When you turn to the executive departments, the President of the United States is a lawyer; six of the ten members of

his cabinet are lawyers; 27 of today's 48 governors are lawyers.

If I may take a moment of your time to turn back the pages of history slightly, I would call your attention to what you all know, undoubtedly when you hear it mentioned, that of the 31 men who have occupied the office of the President of the United States, from George Washington to Franklin D. Roosevelt, of the 31 Presidents, 24 of them have been chosen from our profession, and only 7 of them from all other walks of life combined.

Ah, let it be said, that takes in the earlier days when it was admitted that we were chosen by the people. Then I answer if that is said of the last 13 Presidents of the United States, 11 of them have been lawyers. I stress that figure. Since General Grant stepped out of the White House in Washington, only two of America's 13 Presidents have come from all other occupations, vocations and activities combined.

Coming back again to the present day (and I have the figures in my bag, the breakdown figures to show the facts), 70% of the occupants now of all legislative, executive, administrative and public offices are members of our profession.

What does that mean? I am statistically-minded for the moment. You did this, President Hill.

We have a population of 130,000,000 people. The number of lawyers, active and inactive, in America at the outside figure, are 175,000, so that 70% of the public leadership of a country of 130,000,000 chosen from 175,000 or reduced to percentages, 1/10 of 1% of the population furnishes 70% of the public leadership. And then, I don't care whether it is a judge or who it is, somebody comes along and says, "You have lost public leadership and confidence of the people."

Maybe it is unfair to take the whole population. Suppose we take the whole adult voting population. Approximately 45,000,000 people voted at the last election, and as a result of that, and subsequent elections, of the 45,000,000, 175,000 furnished 70% of the leadership, or in other words, one-third of one per cent accounts for all your leaders.

Will you ladies kindly put your fingers in your ears while

I ask the masculine portion, How the Hell does that show we have lost public leadership?

Why, it is exactly the reverse. When you come to private life, is it not indubitably true that the lawyer stands forth above all other men as the defender of private individual rights, even against the asserted and often arbitrary power of government itself?

Mr. John W. Davis, a very great lawyer, recently said that assuming the possession of the elementary virtues which you attribute to the generality of good citizens, he felt that every American lawyer should have at least three qualities, and he added that he believed—and I want to say that I thoroughly believe, in spite of the smearing process—the overwhelming majority of our profession do exemplify it. Condensed and put in my language, and not Mr. Davis', those three qualities which every American lawyer should have, and I believe most of them have, are

First, utter fidelity to the cause of a client, with no thought of popularity to be won in his defense, and with no flare for unpopularity to be incurred by the assumption of his cause. I want to say here a lawyer can not be a good minister of justice without fidelity. I know President Hill will agree with me, for I heard what he said about the dual capacity of a lawyer who does not have utter fidelity in the cause of his client.

And second, a desire to see justice administered under the law, which I think we will all admit is the only cement to hold together society of free-born men.

Third, is a burning passion for human liberty, for the right of all men, as Kipling so finely put it, "To live by no man's leave, underneath the law."

Liberty—liberty, which under our Bill of Rights, together with property and life, no man in this land is to be deprived of, save by due process of law until and unless our institutions crumble.

Practicing law in Washington for more than a third of a century, I have periodically, not continuously, not by one administration more than another, but periodically, from time to time, witnessed the whittling away from within, of the

vital guarantees of our Bill of Rights, the most glorious two small pages ever written into the English language.

It is, my friends, for the lawyer, the lawyer in all walks of life, but particularly the lawyer in private practice, to whom the individual rights are necessarily committed, to stand against that whittling process, irrespective of the cost, even at the risk of political and official denunciation.

One is staggered by the very thought of what the result might be if we fail to do exactly that. A very, very great judge not long ago reminded us that a people may grow careless and overlook at what cost and at what travail they acquired even the least of their liberties. The process of deterioration is simple. It may come to be considered that a constitution is only the cradle of infancy, that a nation growing up may boldly advance in confident security against the abuses of power, and that passion will not sway more than reason; but one of the ends, when the barriers erected by wisdom gathered from experience are weakened or destroyed (and weakened or destroyed they may be) when desire and interest feel their restraint, what then of the end? Will history repeat itself?

Ah, my friends, history, those pages of history on which are writ the stories of governments which were organized, flourished and destroyed in lands where people first sought, then for a time enjoyed, and finally, lost liberty, will not repeat itself here so long as we lawyers, you and I in our profession, remember, cherish, and follow the examples of that innumerable and immortal host who risked everything for the unbending maintenance of great principles, and the unquenchable assertion of the independence and liberty of those who risked everything, for which Elihu Root so splendidly described when he said, that above all else, the American lawyer has loyalty, loyalty to his client's cause. That cause is his. To it his learning, his experience, his industry and skill are devoted ungrudgingly.

Mr. President, you have already dedicated this day, this Constitution Day, to making the American people Constitution-minded. May I ask, as a secondary dedication of this

meeting of yours that we dedicate it to the American lawyer, the minister of justice, upholder of the interests of the Republic, fearless defender of private rights, and may we pray that his independence will never be lost, that his courage will never fail, that the confidence of the people in him be not "recaptured", but be continued, and increased.