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President's Annual Address

Albert H. Cole
Indiana State Bar Association

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PRESIDENT'S ANNUAL ADDRESS

By ALBERT H. COLE*

I believe that in now addressing you I conform to the unbroken precedent of my distinguished predecessors, when I say that, in thus trespassing upon your time and attention, I do so in compliance with the unyielding mandate of our by-laws, which requires that the president shall, at each annual meeting, deliver the president's address. I do not for a moment doubt the sincerity of those distinguished members of our bar, whom you have honored in the past, in their observation that, in addressing us on the occasion of our annual meetings, they did so more from duty than from choice. I think the members of our profession have something of the feeling of Senator Carter Glass who once said: "I hate to make a speech, I just can't tell you how I hate to make a speech—except in controversy." I confess that I am especially awed in being called upon to make a speech which must be dignified by the title of an address and the delivery of which is prescribed by the ancient by-laws of our association.

Yet I welcome the opportunity to voice to you the gratitude which I feel for the honor which I received at your hands in being permitted to serve as your president during the year which we now bring to a close. To me there can be no greater honor than this mark of your confidence which you gave to me a year ago. I will cherish and appreciate it throughout all the coming years.

I welcome the opportunity to tell you how grateful I am for the delightful associations and fine friendships which I have been permitted to have and to make with the lawyers of our state during the past twelve months. I am thoroughly convinced that in no other profession, in no other walk or work of life, are the friendships so fine and enduring as in the profession of the law. The doctor of medicine fights his lonely

*Address of Albert H. Cole, President of the Indiana State Bar Association, at the Annual Meeting of the Association, July 9, 1937.

battle for the recovery of his patient. The minister of the gospel makes his pastoral calls or preaches the divine word to his own congregation. The engineer pores over his blueprints in his own office or fashions in his own mind some structure of stone or steel. The business man deals with his customers or patrons and comes in touch with those engaged in his own calling at infrequent meetings of his trade association. But our profession is one of intimate contact with other lawyers. We meet them daily in the court room. We discuss with them the close and novel questions which constantly arise. We are associated with them in the trial of cases and become bound to them with the ties of sincere friendship which exist between those who fight a common cause. We learn to admire and respect them as honorable, though formidable, adversaries and look forward with keen anticipation to the day perhaps which may find us fighting on the same side. As Shakespeare said some three hundred years ago, "Do as adversaries do in law. Strive mightily but eat and drink as friends." We have a code of honor all our own. We advise our clients to put their contracts and engagements in writing; yet the spoken word of one lawyer to another remains ever sacred and inviolate. No lawyer worthy of the name would ever think of breaking such an agreement regardless of the consequences of its fulfillment.

I welcome the opportunity to voice my appreciation of the courteous hospitality I have enjoyed and the cordial welcome I have received at the hands of local bar associations whose meetings I have been privileged to attend. I full well realize that the hospitality and welcome came to me not primarily in any personal way but because of the fact that I was for the moment your president. But I will always treasure the recollection of those pleasant visits and I am grateful for the good will toward this association which was so uniformly manifested.

I welcome the opportunity to make public acknowledgment of the unselfish cooperation and assistance which I have received at the hands of the officers of the association and the

chairmen and members of its committees. Never were they called upon when they failed to respond. If there has been one discordant note in our relations it has failed to fall upon my ears.

I presume the president's address was intended by the fathers of this association to be in the nature of a message of information of the state of the association and a report with respect to its activities. You have heard the reports of the Secretary-Treasurer and of the Membership Committee. It is no doubt a source of gratification to you as it was to me that we have a balance of more than \$3,000.00 in the treasury and that our balance has been increased by more than fifty percent during the past year. When we recall that some six or seven years ago the association was in debt to the extent of more than \$5,000.00, we may well congratulate ourselves on the satisfactory state of our fiscal affairs.

You no doubt observed that our membership has shown a healthy increase during the year just past. Your vice-president, Mr. Bomberger, as *ex-officio* chairman of the Membership Committee has been unusually industrious and efficient in his efforts to enlarge the roster of our members and the results bear testimony to the success of his labors.

With your permission I will briefly refer to the activities of our association in its attempt to fulfill its various purposes as set forth in its Articles of Association.

It was formed to encourage social intercourse among the lawyers of the State of Indiana. I am not one of those who feel that the social side of the bar association program is the least important phase of its activities. I am not one of those who believe that the time spent in cementing our friendships and extending our acquaintances with the lawyers of our state is wasted time. I believe that these meetings, affording as they do, the opportunity of forming contacts with lawyers from distant parts of the state with whom our daily work does not bring us in touch and of renewing associations with those whom we have already come to know and admire cannot help but very much enrich our lives. Nor is the encouragement of social intercourse among the lawyers of this state

without its value in promoting the efficient administration of justice. You and I know that where cordial relations exist between lawyers trials are conducted more intelligently and business is dispatched more promptly.

Our association was formed to uphold and advance the welfare of the profession of law. It has ever been our aim to protect the profession against the illegal and unauthorized practice of law by persons and corporations other than regularly admitted members of the bar. We need not again remind ourselves that our efforts in behalf of the welfare of the profession are actuated both by motives of self interest and by a very sincere regard for the public interest. You will hear this afternoon the report of the Committee on Illegal Practice of Law and Grievances. I am very sure that that committee has done everything within its power to prevent the unauthorized practice of the law and I will not enter upon a further discussion of that subject.

The welfare of the profession is a subject having to do with the character and fitness of those within the profession as well as encroachments upon the field of the law from without. I think it has been for some time recognized by this association that under the statutes of Indiana as they have existed, at least prior to certain enactments by the last General Assembly, there is relatively little which can be accomplished in the way of disciplining or disbarring the meager element of unprofessional lawyers who haunt the fringes of the profession. It seems to be the consensus of opinion of those who have made a study of the question and followed the experience of other states that a satisfactory solution of such problems as yet remain will never be attained until we have an integrated or all inclusive bar.

This association filed with our Supreme Court an application requesting that, by virtue of its inherent power, the court supervise, regulate and control the practice of law throughout the state. The application was dismissed and I for one am somewhat inclined to believe that any action by the court looking toward the regulation of the practice had best be first specifically authorized by legislation.

No attempt was made at the last session of the legislature to bring about the enactment of any such legislation, because it was thought best to concentrate our legislative efforts on the enactment of the rule making bill which the association had so long sponsored.

It cannot be said, however, that progress is not being constantly made in raising the standard of character and fitness of the profession in Indiana. We have all been impressed with the high character and fine ability of the young lawyers who have been admitted to our ranks since the Supreme Court was given jurisdiction to admit attorneys to practice law in all courts of the state under such rules and regulations as it may prescribe. The character of all applicants is now investigated and scrutinized and must be found such as to make them worthy. They are required to pass a fair but difficult examination. The result is that the young men and women whose names are now being entered upon the roll of the Supreme Court are of high purpose and excellent character, with a knowledge of legal principles and legal reason far above that of the average man who was admitted to the bar some years ago. Fully as important is the fact that the young lawyers now entering the profession may justly feel that admission to the Bar in Indiana confers a mark of distinction and that they have attained a calling which carries with it both honor and responsibility. They prize their membership in the profession and are disposed to guard with jealousy its standards. We may rest assured that with this higher level of character and fitness the ethics of the profession will rest in safe hands.

I welcome the opportunity at this time to pay my tribute to the splendid and unselfish service which has been rendered to the public and to the bar in this state by those who have been responsible for the adoption and the application of the rules and regulations for the admission of attorneys to practice law in Indiana. I refer to our Supreme Court, the Board of Bar Examiners and the faculties of our accredited law schools. Cooperating with them has been our own committee on legal education. It was my recent privilege to attend a

meeting of the Joint Council on Legal Education, created by Article XXII of our by-laws, consisting of the deans of the approved law schools and the Committee on Legal Education, and meeting in joint session with the members of the Supreme Court and the Board of Bar Examiners.

The holding of these examinations has become one of the main interests in life for the able and busy lawyers who have this matter in charge. They have given unstinted time and unceasing effort to make the examinations as thorough and as fair as examinations can be made. The educational requirements in the law schools are constantly being raised. In no commonwealth in all the sisterhood of the states has there been made such progress as has been made in Indiana during the past six years. We may be congratulated upon the fact that another declared purpose of our association—to effect thorough legal education, is being accomplished in such great and increasing measure.

Our association was formed to promote reform in the law and to facilitate proper legislation. At the annual meeting in South Bend, in 1932, the Association specifically approved a bill designed to authorize the Supreme Court to provide by rule for the practice and procedure in all of the courts of this state. Obedient to this mandate of the Association, that bill in its essential substance, was introduced at the 1933 and 1935 sessions of the Legislature. On each occasion it failed to pass. It was again introduced at the 1937 session of the General Assembly. It passed the House with but three dissenting votes, was unanimously passed by the Senate and received the approval of the Governor.

It comprises Chapter 91 of the published Acts. Pursuant to the power which it grants, the Supreme Court has already taken action to expedite the determination of causes on appeal and thus within less than thirty days after that bill became a law, we find one of the most common causes of complaint—the weary months and years during which causes have been permitted to drag their way through our courts of error is now in a fair way to be forever silenced.

If the bench and bar measure up to their opportunity and

their responsibility there is every reason to believe that the enactment of this law will go far toward bringing about a better system for the administration of justice in Indiana. In the mother country from which our system of law was derived, the courts have at all times possessed the power to regulate their own procedure and practice. It is true that the system became so complicated, so technical and so tardy that for centuries its abuses constituted a public scandal. Shakespeare scoffed and Dickens scorned. In 1852 a comprehensive code of 239 sections was adopted by Parliament, and yet, notwithstanding all that Britain had suffered at the hands of court-made rules, a provision was inserted in that code leaving the judges free to alter any of the rules therein contained. By the judicature act of 1873 the jurisdiction to regulate procedure and practice was returned intact to the courts, and there it has since remained.

The codes adopted by the various legislatures in our country were largely the product of the brain of David Dudley Field. He was the author of the New York code, which was the model of our own. It was adopted in 1848 and revised in 1876. In 1912, however, the New York Board of Statutory Consolidation in its report said: "The present code system in this state of regulating details of practice by statute has been tried and has so lamentedly failed and has been condemned in such unmeasured terms, that it may be passed by without further comment." Experience everywhere has pointed to the wisdom of entrusting our procedural system to the courts. Such a system is now in vogue in almost half the states of the Union. A little more than a quarter of a century ago Congress authorized the Supreme Court of the United States to regulate by rule the practice in equity causes. The equity practice thus established has been eminently satisfactory. Three years ago Congress empowered the Supreme Court to prescribe by general rules the practice and procedure in civil actions at law in all the district courts. Those rules will shortly become effective.

It is, it seems to me, indeed fortunate that our Supreme Court has at this time been clothed with authority to prescribe

the system of procedure and practice in Indiana. It is in a position to make an early study of the federal rules and is authorized, by changes in our own system to maintain conformity between the state and federal practice if, in its judgment such conformity is desirable.

The reasons dictating the restoration of the power to prescribe our practice to the courts are so apparent and have been the subject of such frequent comment before this association that I would make no reference to them now were it not for the fact that it seems to me important that at this hour the bar of Indiana should with enthusiasm and with one accord support the court in its desire to improve the administration of justice. The reasons briefly are these:

The Supreme Court has an intimate knowledge of procedure in all the courts of the state and its imperfections are daily being brought to its attention. Members of the Legislature, recruited from every trade and calling in life, have, for the most part, no such knowledge.

The Legislature meets but once in each two years and then for but a brief sixty days. Its interest and attention is largely and necessarily centered upon urgent social, economic and fiscal problems, leaving little time for a study of our system of procedure in the courts.

Many of the lawyers in the Legislature to whom questions of court procedure are necessarily referred, are lacking in that degree of acquaintance with procedural questions which is possessed by the Judges of our highest court. Let me here, however, express my admiration for the character and the ability of the lawyers who served in both houses of our last General Assembly. They were, without exception, lawyers of exceptional ability and outstanding rank. They were leaders of their bars and without their sympathetic and enthusiastic support, this bill, of course, never would have been passed.

The Supreme Court is in a position to consider every rule of procedure in its proper relation to other rules having to do with the same subject matter. The Legislature, of necessity, must view these questions without prospective and many are

the instances where conflicting statutes have been passed oftentimes at the same session.

Finally the authority which has been conferred upon the court places definitely upon bench and bar, where it rightfully belongs, definite and complete responsibility for the administration of justice in Indiana. No longer can there exist a divided responsibility.

We dare not fail to measure up to the responsibility which now rests upon the profession. The public will not forget that the technicalities and delays of the common law procedure which the legislatures sought to remedy by their codes was the product of the courts. It will not forget that many of the technicalities now found in our code system were injected into it by courts and lawyers, and that courts and lawyers are largely responsible for the delays which now exist. If we fail to accept the opportunity which now lies before us and give to the people of this state an administration of justice better than any we have ever known, we may be very sure that the people, through their representatives, will again take the matter into their own hands.

The record of the year's activities would not be complete without some reference to the referendum which was conducted by the association upon the question of the pending proposals to reorganize the Supreme Court of the United States. Your Board of Managers were unanimously of the opinion that the Association as such, should take no stand upon this question. We cherish the independence of our individual convictions upon all public questions. We recognize no right on the part of this Association or any other organization to speak for us upon matters of this kind. We would resent the attempt of a majority to commit the minority to its views. The question to which I have referred, however, is one in which lawyers were profoundly interested and one upon which by knowledge and training, they, of all vocations, were best qualified to speak. It was accordingly decided to offer the Association as a medium by which all the individual lawyers of the state, both within and without the association, might express their opinion upon this question of such absorb-

ing interest. The poll was taken and the result communicated to our representatives in Congress.

These are changed and changing times through which we pass. The development of the physical sciences, the erasure of state lines save for political purposes and the growth of mass production have presented many governmental problems which depend for a sane solution upon the most enlightened and unselfish leadership which America affords. In times gone by the Bar has supplied that leadership. Its members framed the Constitution of the Federal Union and the Constitutions of its component states. Webster and Clay and Jackson and Calhoun, lawyers all, shaped our policies during the first half of the last century. The logic and the eloquence of Lincoln and Douglas, molded our destiny as the dark clouds gathered for the war between the states. A century ago De Tocqueville wrote:

“The special information which lawyers derive from their studies ensures them a separate station in society; and they constitute a sort of privileged body in the scale of intelligence. * * * Lawyers are attached to public order beyond every other consideration and the best security of public order is authority. * * * In America there are no nobles or literary men, and the people are apt to mistrust the wealthy; lawyers consequently form the highest political class and the most cultivated circle of society. * * * If I were asked where I place the American Aristocracy, I should reply without hesitation, that it is not composed of the rich, who are united by no common tie, but that it occupies the judicial bench and the bar.”

The lawyers of today by temperament and training have the capacity and the vision to supply the leadership which America so sorely needs. If our profession fails to exercise that controlling influence upon the affairs of state which ought to be our contribution, it will, I believe, be due to our inability to rise above the tide of excessive partisanship or our failure to assert our innermost convictions when they run counter to the interests of those by whom we are employed. Our profession is properly political minded. Party loyalty is a splendid thing. If we are to make our influence felt we must espouse the cause of that party whose principles and policies,

by and large, seem to us to promise most for the public good. I speak, however, of individual measures. How often do we praise or condemn because praise or condemnation issues from the high command of our party? How often is our position reluctantly influenced, not by what is most for the public good, but by what will most insure the political success of our party or bring about the defeat of our adversaries?

Devotion to a client's cause is, of course, the most sacred obligation of professional employment. I am ready to concede that that obligation extends beyond strict professional employment. We owe it to those who have favored us with their business to exert ourselves to the end that their rights are protected as against imposition on the part of public agencies as well as aggression at the hands of private interests. And yet how often is the attitude of lawyers on public questions dictated not by their own sincere convictions, not by a consideration for the rights of their clients, but by a consideration for the interests and the desires of those for whom they serve.

If the lawyers of this country, endowed by their training to so readily discern right from wrong, could take their stand upon every public question, freed from considerations of party loyalty and party advantage—freed from the aims and the interests of their clients—seeking only that which is best for America, how much more unanimous would be their verdict, how much more controlling would be their influence and how much more secure would be the future of our land.