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# Address of Jess Hawley Delivered Before the Washington State Bar at Walla Walla, June 21, 1930

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## ADDRESS OF JESS HAWLEY DELIVERED BEFORE THE WASHINGTON STATE BAR AT WALLA WALLA, JUNE 21, 1930*

In view of the interest of the attorneys of Washington in an involuntary integral State Bar Organization, it may be of interest to recite the history of the Idaho Act.

In 1921 the lawyers of Idaho came definitely to the conclusion that a voluntary Bar Association had been, then was and would always be a shabby, even though a genteel sort of failure. The next move was to find another type of organization, and casting about they came across the model self-governing Bar Act reported by Judge Goodwin's committee to the American Bar Association after many years of study This, after a struggle, was adopted as the law in 1923.

Now, having gotten the law, we hardly knew what to do with it. Most of the attorneys of the state knew nothing about it, and most of those who knew about it were opposed to it. Many were the arguments against the bill and subsequently against the law. Some very independent lawyers said they did not feel that they should be compelled to join any organization, others took the attitude that the practice of law was a private concern and an individual right and should not be regulated or controlled by any one except the individual practitioner, others said that it was a disgrace to license lawyers as though they were dogs, others felt that the public was against lawyers and that this law would be just the beginning of an attempt of the public to regulate the profession and ruin it. We noted, however, that those lawyers were generally men who made no effort whatever to help the former voluntary Bar Association protect the dignity of the bar and preserve its standing with the people.

Altogether we were in a sorry mess, but being right we resolved to get behind the law and go ahead with it as far as we could. Commissioners provided for by the law were elected, and then the battle waged afresh. I notice that you have been talking about an incorporated bar. Had our Supreme Court regarded our organization as a corporation, the law would have been held unconstitutional. There are many features about it which resemble a corporate organization, but fortunately our court was not impressed that these

*The following is part of the address of Mr. Jess Hawley.

features dominated the Act. The defects in the Act were largely remedied at the next session of the Legislature in 1925. Chapters 89, 90, 1925 Session Laws.

Our lawyers knew that under the voluntary bar organization there had been no real unity There was no power. The busy lawyer found it very easy to lose himself in his work and fail to take any interest in the standing of the bar or the performance of the profession's duty The average busy lawyer had forgotten that the law profession owes many duties to the public which can be performed only by the men who are members of the profession. Very few lawyers were giving much attention to the bringing to date of the procedural machinery of justice. Due to the shifting of the work of the profession from court to office, lawyers lost much of the old-time contact of the days when the law practice was practically all carried on in courts. For these considerations, and others I have not touched on, the lawyers of the State felt that the Bar Act was worthy of a fair trial. There were individuals who feared that the Bar Commissioners would interfere with their individual rights, they might be inclined to meddle with the personal affairs and practice. But the way the question of lawyers' conduct worked out was quite satisfactory. The Bar Commissioners had many complaints about the manner in which individual lawyers were handling business. Oftentimes the Bar Commission found that the complaint was the result of misunderstanding, or was something involving contractual relations quite apart from professional conduct. Many complainants were convinced that the lawyer was right, at least had done nothing of intentional wrong, and the lawyers themselves found that they were really protected by a proper explanation and investigation of some questioned actions.

Some complaints were founded justly and resulted in prosecution and disbarment proceedings thus came before the Supreme Court. A notable case was *In re C. H. Edwards,* 45 Idaho 676, 266 Pac. 665. Edwards had been disciplined by the commission for alleged misconduct, lack of propriety and disregard of professional ethics. His attorneys very thoroughly raised the constitutional objections that the procedure outlined for disciplining attorneys denied them due process of law, that the Act delegated legislative power to the Supreme Court and the commissioners and delegated to the latter judicial power; that the title of the Act was insufficient, that the law created a special corporation, that a special

court was created against the constitutional provisions, that the Supreme Court was deprived of its jurisdiction and power, that the law took private funds and appropriated the same to private use. While holding some objections valid, the court in the main denied Edwards' contentions and quite firmly established the Idaho Bar Act as valid and constitutional. Later attacks were made in the case of *In re Dampier,* 46 Idaho 195, 257 Pac. 452, and in *In re Downs,* 46 Idaho, 464, 268 Pac. 17.

The Act has passed under the microscope of an adverse and bitter opposition. It has been analyzed, dissected, gouped, pinched, tasted, and bitten by the courts, and yet has survived the day It stands now stronger than ever. The lawyers of the state believe in it without notable exception. To illustrate this point, one of the most bitter opponents that the law had will be my successor as commissioner of the Western Division this year. The judiciary has become convinced of the wisdom of the law as well as its legality and are for it practically to a judge. The people of the State are getting the notion that the bar is awakening to its duty to see to it that the administration of justice is efficiently and fairly carried on and is brought to date as conditions require. They are satisfied that we are attempting to weed out the blacklegs and crooks from the profession. They are becoming satisfied that we are honestly striving to give attention to the careful election of men to the profession, increasing educational requirements and generally toning up the bar.

The press of the State of Idaho is coming to the notion that the bar is sincerely trying to perform its duty We have had many favorable comments editorially upon the purpose of the Act and the manner in which it is being administered. The Legislature of the State of Idaho is getting the same opinion, and has more confidence in the legal profession than in any period, at least during my life as a lawyer. The State officials, I think, have the same notion. To illustrate this, in 1929 a section was added to our Bar Act that I think is without parallel in the history of the bar organization in the United States. It is a definite recognition of the importance of the profession and its special concern with the administration of justice.

The act is as follows.

> "The Governor, Supreme Court, or the Legislature of the State of Idaho, may request of the board an investigation and study of and recommendations upon any mat-

ter relating to the courts of this State, practice and procedure therein, practice of the law, and the administration of justice in Idaho, and thereupon it shall be the duty of said board to cause such investigation and study to be made, reported to an annual meeting of the Idaho State Bar, and after the action of said meeting thereon, to report the same to the officer or body making the request. The board may without such request cause an investigation and study upon the same subject matters, and after a report thereon to an annual meeting of the Idaho State Bar, report the same and the action of said meeting thereon to the Governor, Supreme Court, or Legislature of the State of Idaho." (Laws 1929, Chap. 98, Sec. 4.)

"The Idaho State Bar and its board of commissioners shall have the power and authority to aid in the advancement of the science of jurisprudence and in the improvement of the administration of justice." (1929 Laws, Chap. 98, Sec. 5.)

Last year we concluded that a Judicial Council be appointed, and accordingly it was done. It is composed of five judges and five attorneys. That Judicial Council was financed solely out of the meager income of the Idaho State Bar, but the members of the Judicial Council went to their work with the idea that membership on the council was an honor. The result has been that our Judicial Council has made a splendid survey and statistical study of that business in Idaho for the past ten years, has made definite recommendations for change of our judicial system to bring about more economy and efficiency, it has suggested changes in criminal procedure and civil procedure to bring Idaho up to 1930 instead of leaving us back in the early seventies, it has also suggested the abolition of an antiquated Probate Court system. Most of the probate judges in Idaho are not lawyers, are not skilled in the business or law of administration of estates and the change should be had.

I have talked about the history of this Act and the litigation, now just a short resume of the Act. It provides for the election of a board of commissioners of the Idaho State Bar, each one to hold office for three years and one to be elected each year. The State is divided into three divisions and the members of the bar of each division elect the commissioner from that division. The ballot is secret and written. The bar commission organizes by the election of a president, vice-president and secretary. The secretary need not be a member of the board. He is paid $75.00 a month. I think that a large organization cannot be successfully

carried on without paying some one to devote part of his time at least to the details of its business. We have found that our secretary has been worth a great deal more than he has cost. The board is given the duty of recommending to the Supreme Court admissions to the practice of law, conducting examination of applicants, passing upon complaints concerning the professional conduct of any person admitted to practice law, recommending disciplinary action, suspension or disbarment and generally concerning itself with the affairs and interests of the profession.

Each lawyer each year must pay a license fee of $5.00 into the State Treasury where this creates a special fund which may be spent on order of the Bar Commissioners. There is no salary paid these commissioners, but their expenses are in part met. The expenses of disciplinary proceedings can be met, these sometimes are very heavy In one case over $1,200.00 was spent in prosecution. In most instances, the members of the bar asked to serve on disciplinary committee do so promptly, efficiently and without charge. One of the important functions of the commission is to suggest rules for admission to practice. These rules have been twice changed and we are increasing the legal as well as legal-educational requirements. After 1932, two years college preparatory to law course will be required. The Supreme Court must finally accept and pass on them, but the Bar Commission initiates them and very little change has ever been made from the suggested rules. The commissioner in each division must have an annual meeting in his division and a meeting of the entire bar must be held once a year. The expenses of these meetings are borne out of the fund.

In addition to bestirring an interest in the profession and overcoming the lethargy of individuals to do things for the interest of the profession and to keep it on the high plane it deserves to hold in the esteem of the public, we have busied ourselves with the question of compensation. We encouraged the several County Bar Associations in Idaho to adopt minimum fee schedules. During the past two years, practically every one of them has so done, and now the lawyers of the State of Idaho have some uniformity in charges, at least in minimum charges. We hope this will discourage shopping, eliminate the practice of cutting fees to get business, result in the lawyers charging for advice where formerly they gave it free. While we haven't reached the millennium at all in this matter and the charges of the different Bar Associations are

not the same, still a very decided step has been taken toward improving the business end of the profession.

Along this line, we took another rather radical step. Trust companies, banks, real estate dealers and others have more and more gone into conveyancing, including not only the drawing of deeds, but of intricate real property contracts and options, the making of wills and trust instruments, some of which required skill that very few attorneys possess. They have even drawn articles of incorporation. The public is entitled to competent service and advice and to have this requires men of education, experience and training. The laymen who undertake this type of law practice are not required to pass any type of examination as a condition precedent to drawing of the most intricate documents, they are not required to have any particular qualifications, they are not regulated or supervised. The results of their efforts take much of the time of courts to correct.

The lawyers are entitled to this field of law practice. Litigation is not sufficient in amount of volume. The lawyer has fitted himself, not only for the actual drawing of instruments, but has a background or knowledge which is required in order that one may know what type of instrument to draw, what covenants, guarantees, and warranties are necessary to express the true meaning of the parties. He is an expert fitted by education, training and experience to render the service. It is time that we stopped this encroachment. It has gone too far already In fact, it has gone so far in many sections of the country that laymen have usurped the work of conveyancing and probate work to the exclusion of the legal fraternity. We are seeing trust officers, bankers, real estate dealers and accountants getting and trying to do the work which lawyers should do in the fields of conveyancing, creation of trust estates, probate work, income and inheritance tax work and corporation organization. One of the worst features is that these laymen often employ lawyers to assist them in this invasion. I doubt their complete success without someone telling them concerning law they advise about. It isn't the man of little reputation or practice to whom the large organizations entrust their law practice, but they get the assistance of some of the leading attorneys.

You will find, as we found in Idaho, that the banks and trust companies enlist the support not only of their own attorneys, but of those who hope to be their attorneys in trying to retain the control of the law practice that they have wrongfully gained. If you

start that fight in Washington, look closely to the leadership in your cities and towns. I believe that you should refuse to follow or acknowledge those men, no matter how learned or skilled they may be, who are assisting the laymen to invade the field of practice that legitimately belongs to the profession. If you think the task is going to be easy, don't start it. It will take backbone, courage and zeal to win, but if you don't make the fight and if you don't win it, the practice of law in Washington must and will gradually be confined to appearance in the courts.

In 1929 we secured the passage of a law in Idaho making it contempt of the Supreme and District Courts for any one to practice without admission and without paying the annual license fee required by the Bar Act. Chapter 63, 1929 Session Laws.

I do not know whether you gentlemen in Washington have made an attempt to protect your rights. I hope if you do, you will be as successful as we were at least, but if you are not successful and your courts should finally hold that the practice of law is confined to court work, it seems to me the bar then owes the duty to the public to insist that the men who take your places as lawyers in office practice should have the training and knowledge requisite to properly serve the public. If the trust companies must practice law, if the real estate dealers, the bankers and the expert accountants also must engage in the practice, let us see that before they do so that some type of board shall examine them as to their knowledge and ability to draw instruments and give advice. The public has a right to this protection.

If the public gets the knowledge that it should have, it will abhor the practice of trust companies advertising for and inviting the business of widows and orphans, boasting how carefully they look after estates and trusts, but taking good care that they draw the very instrument which gives to them the power over the trust estate. The very statement of the proposition discloses that the trust company while acting in a fiduciary capacity is itself setting forth the terms under which it is to so act. Who represents the widow and the orphan under these circumstances? It is much like a supposedly friendly poker game in which the hosts dwell upon the friendliness of the game, but play their cards close to their stomachs.

In this connection it is important to explain to the press the aims of the profession and particularly the abolishment of the abuse of the practice of law. I doubt that we can get the public

ear, for we don't understand the public as do the newspaper men. Each morning and each evening they are serving out information to their subscribers, they know what the subscribers want to know. The people aren't going to listen to the long-winded discussions such as we are prone to give. You know you can't get a man who immediately rushes to the funnies in the paper as the principal thing to be read very much interested in problems such as we want to present, but the newspaper knows how to get the attention of such people. Therefore, I urge the men to realize that the newspaper profession should be enlisted in our cause. I have enough confidence and faith in the honor and integrity of that profession to believe that when they are satisfied that we are sincere and have a real problem to present that they will do their great and sacred duty and pass the information to the public.

The legal profession can drift as it has drifted in many places and go down in public estimation as it has, or it can assume leadership and put the profession on the plane that it deserves. We must realize that the practice of law is a privilege and for that privilege we owe a sacred duty to the people. That duty can't be accomplished by merely building up a lucrative law practice. It can be accomplished by giving some part of our thought and attention to correcting defects in administration of law, by suggesting changes in law, by taking some leading part in all of those public activities or public movements which look toward the changing of our form of government. I believe that the people of this country will seek our leadership, provided they are satisfied that we are honestly trying to perform a professional duty and not selfishly looking for profit or benefit to ourselves. We are trained in analyzing law propositions. We are trained in knowledge of the law and the statutes. It follows, therefore, that we can be of the greatest of value to the public in giving to it our opinions, and our analysis of such proposed changes.

The legal profession must bestir itself to take the place which the people of this country are willing for it to occupy

HON. JESS HAWLEY.*

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