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Address [from the President of the American Bar Association]

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draws a lease, trying to give effect to the agreement we have in mind. On behalf of the lessee another of us thinks other language is more appropriate. Not for exhibitionism, or to build up time for which to charge our clients—but sincerely we battle in respect to language.

It is just a matter of draftsmanship, as I view it, provided the language is broad enough to include communist, or fascist, or the next party that comes up with the word “American” before it. The party that is really going to put us out is going to be a new name, and the first part of the name is going to be “American,” or something like that.

I think the Committee convinced the Board that as a matter of draftsmanship it would be better to leave out “communist.” I think it is better draftsmanship to have all-inclusive language—not name anyone because at this moment, this year, that one is opposing us in Korea, or elsewhere. If we were to include communist, also include fascist. If they were included, should we not include a number of others? If we have left out others, should we a year from now, or two years from now, amend the oath?

Tracy is standing. I can't compete with Tracy in eloquence. I do not consider him an egotist. I consider him considerably well informed, and it terrifies me he is going to follow me.

Your Board has recommended two things to the Supreme Court, designed to accomplish the various purposes Tracy and others have so eloquently recommended. We are not in a position of having recommended one and not the other.

The question is: What draftsmanship is the better draftsmanship to accomplish the purpose every man here has in mind?

Editor's Note: At the conclusion of the foregoing discussion, the meeting voted in favor of including the following language in the attorney's oath. “That I am not now, and never have been, a member of the Communist Party, or any other organization or group advocating the overthrow of the government of the United States by force or violence.”

ADDRESS

BY CODY FOWLER

When I say that I am happy to be here and pleased that I should have been asked by your Association to say something at your convention, these are not just orthodox statements. I like the West. I like the western people. I lived many years in the Southwest, where, as here,

people are descended from pioneers who carved their homes and happiness from the plains and the forests.

This is not my first visit to your state. I served some years ago—some wars ago—at Fort Lewis, then Camp Lewis.

Then again, just about two years ago, I had the extreme pleasure of attending the American Bar Association Convention at Seattle. I must in all fairness proclaim that we have never had a finer convention, nor met more sincere hospitality anywhere than in your great state. No wonder I am happy to return.

During my stay at Camp Lewis, I learned to love your state. I made up my mind that if I couldn't practice law in Florida, I would like to come to Washington to hang out a green shingle. As I became acquainted with the lawyers of this state, I feel I chose well in setting up practice in Florida. I don't believe I could have ever stood the competition here.

There has always been a fine delegation from the state of Washington active in the American Bar Association. It has been my pleasure to know many of this delegation. As a matter of fact, I believe I have more friends in Washington than in any state outside my own. This fact, I trust, is not due to the great distance between Washington and Florida.

You know, it takes courage to speak to you people who so recently furnished the American Bar Association with one of its great Presidents—Frank Holman. His speaking ability and record of accomplishment have made it most difficult for those of us who follow him. We know that we will be judged, especially in his home state, by the high standard he set. That fact alone is enough to give me a terrific case of stage fright.

If Frank Holman has added to my burden in one respect, he has lightened it in another. He has given me a point of departure for my talk today. During his year as President of the American Bar Association he never hesitated to speak out boldly on the problems of the day, even though many of these problems were controversial in nature. In thus speaking out, he was fulfilling his highest duty, not only as President of our Association, but also as an American lawyer. The rest of us should follow his example. I hope to do so.

In these difficult times, there are many problems facing our country, but as I see them, they are mainly three.

The first problem is war. It is here already, but in a small way compared to the all-out war which can too easily develop. I do not intend

to discuss that problem today, except to say that if all-out war comes, the lawyers of the present, as the lawyers of the past, can be depended upon to do their full duty on the battlefield and on the home front.

The second problem, and also one which I will not discuss in detail today, is the infiltration into our schools, colleges, and other organizations, and into our government itself, of proponents of foreign ideologies. These people are affirmatively committed to the destruction of our form of government, our way of life, and our American opportunities. They are our enemies.

The third problem, and one which I would like to discuss briefly, is the tendency in many quarters, inside and outside the government, to espouse those principles and objectives which necessarily lead in the direction of a paternalistic state. This is a trend of the present century, and not in accordance with the past.

It most certainly is not a heritage from our forefathers. They were hardy pioneers, who relied upon themselves for their social and economic welfare. They asked little more of their government than to be left alone.

To comprehend and understand the extent of this twentieth-century trend, it is necessary that we review the history of our nation's birth and the creation of our government. Our nation, as such, was not created with the Declaration of Independence. The Revolutionary War was not fought by a nation, but by thirteen colonies or states, each a complete and separate sovereignty. These separate states united together, of necessity, for mutual defense and to fight a common enemy, and for no other reason. With the end of the war, the loose central government which had existed under the Articles of Confederation fell completely apart. The states lost interest in union, each concentrating only on itself and its welfare. It was not until extreme sectionalism, interstate difficulties, and discriminatory commercial legislation had produced near chaos that the separate states recognized the need for a sound central government. Then and only then did the states send delegates to the Convention of 1787, which was called for the specific purpose of amending the Articles of Confederation, but which ended in the production of the Constitution of the United States.

Though the delegates to the Constitutional Convention appreciated the need for a firm national government, they approached the task of forming it with numerous misgivings. Their greatest loyalties and devotions remained with their respective states. They feared concentration of power in a remote central government. They knew from first-

hand experience the excesses which could come from such a government. They knew that governing power, unwisely placed, was a serious threat to human rights and liberties. They were as interested in restricting governmental powers as they were in granting them.

Motivated as they were by these varying and sometimes conflicting considerations our forefathers envisioned and created a central government of severely restricted powers; a government geared to perform only those functions of a national or international character which were impossible of proper performance by the individual states; a government which would be the servant and not the master of the people; a government which would recognize and protect as paramount the basic rights of the individual; a government which would be responsible to the will of the people when exercised in the manner provided in the Constitution but which would not be subject to change at the whim of those in power.

It seems clear from the Constitution itself that the framers, in drafting that document, had little concern for the social well-being and economic security of the individual. It is as though our ancestors had told us in so many words, "If we are protected from the excesses of government, we can find our own economic and social welfare and happiness."

Thus we see the purposes, ideals, and aspirations out of which our ancestors fashioned the government of the United States. Under that government, a small nation of thirteen frontier states has grown to be the greatest nation the world has ever known—a nation boasting the largest cities in the world, the most productive industries in the world, the most fruitful farms in the world, the highest standard of living in the world, and, what is still more important, the happiest people in the world.

It seems unbelievable that any American would change the basic structure of the government and the economy which have produced these blessings, and yet we know that there are those who would. We are told from many quarters that the people must submit to increasing regimentation and government controls if our country is to continue to prosper. We are even called reactionaries by many if we suggest that the individual should be self reliant rather than government reliant.

Of those who would change our American way of life, some are informed and sincere, some are misguided, but also sincere. Many are just ambitious. Be that as it may, these people have brought about what I have referred to as the twentieth-century trend. They have brought about a retreat from the principle that the power of the

federal government is a very limited power. As a result, we have seen the federal government encroaching, step by step, into the territory which had always been considered the exclusive domain of the states. This encroachment has now advanced to such a stage that we lawyers have difficulty in advising our clients what, if any, limits that power must recognize. A symptom of this trend has been the extension of government into the field of social and economic welfare. Steps have been taken in a direction which, if continued, could lead to destruction of American industry and initiative and, ultimately, to a paternalistic type of government. Kill the pioneer spirit in America and you will have killed the American way of life.

Every thinking American should be able to see the threat which is implicit in this twentieth-century trend. I am convinced that the great majority of lawyers see it and recognize the need to do something about it. This fact is important. It may well be the salvation of our country

But what about the average citizen? Does he approve of what I have referred to as the twentieth-century trend? More to the point, would he approve these trends if he understood their full implications? These questions are extremely pertinent, for we must never lose sight of the fact that in a republic such as ours, the people are entitled to and can obtain the character of government they want. This does not mean that people in a republic always end up with the type of government they want. Unless they take an aggressive interest in affairs of state, they can easily be misled into basic governmental changes not of their own choosing but which, once accomplished, are most difficult to remedy. The quicksands of despotism can all too quickly close over the heads of the democratic people who grow careless of the political paths they follow

It is one thing for our people to adopt changes in government which they want and which they know they want. A majority has every right to alter American liberties and rights and the relationships between the individual, the state, and the federal government. It is quite another thing, however, for the people to be led into basic changes which they do not understand and which they would never have accepted if they appreciated the full implications of their actions. The thoughtful, educated action of the majority is the very essence of republican government, and this is true wherever that action leads. Conversely the unformed acquiescence of the people in programs which they do not understand is absolutely foreign to republican government.

I am one of those who has great faith in the judgment and patriotism

of the average American. I believe that a great majority of our citizens, no matter what their station in life, are devoted to the American system. But many of these citizens are inadequately informed. Developments in government seem remote from them. Many of them have been lulled into a feeling that their way of life is secure from all threats. They have been told that a new and untried way is better.

These people cry out for leadership—not the insincere leadership which is motivated by the selfish interests of the leader, not the insidious leadership which conceals the ultimate harm behind what appear to be immediate benefits, but the thoughtful, sincere, patriotic leadership which is aimed at the preservation of our rights, liberties, and happiness. Such leadership would be able to make clear to the people the subtleties that produce this twentieth-century trend and the results that will follow. Then the political choices would come from an informed public rather than from one groping to find its way or unaware of the dangers ahead.

This need for leadership presents a real challenge to the American lawyers. It is not going too far to say that if the right kind of leadership is to be forthcoming, it must come from us as lawyers—where else? The lawyer, because of his knowledge of government and his ability to recognize the full implications of new laws and practices, is best qualified to cause our people to understand what is taking place and what effect increased government activities in certain fields have upon our cherished rights, liberties, and opportunities.

Now I say these things well knowing that the people, according to recent statistics, have something less than complete confidence in lawyers. These statistics indicate that only 25 per cent of the American people are friendly to our profession. Of the remainder, 25 per cent are hostile to us and 50 per cent know too little about us to express an opinion.

Be that as it may, the American people listen to the lawyer when he speaks. They realize that because the lawyer is specially trained in such matters, his opinion on governmental policies and developments is worthy of special attention. This is especially true in the smaller communities where the lawyer is more likely to be known and respected. But the personal opinion of the individual lawyer is too often discounted because the public may believe that it is colored by the interest of a client. But whether the community is large or small, when lawyers as a group take an aggressive stand their recommendations and opinions are accorded great weight by the public.

Lawyers are subject to criticism for having too much rugged individualism. Each of us is too much inclined to be dependent upon himself to meet day-to-day problems. This self-dependence has its virtues, but we must not lose sight of the fact that we are living in a day of organization. Changes in our way of life are being accomplished, not so much by individuals as by groups. Time and again, we have seen an aggressive, organized minority impress its will upon an acquiescent, unorganized majority. This fact should convince us that the individual lawyer, acting alone, cannot make our people fully appreciate the value of the American way of life and the chances of losing individual liberties through gradual encroachment of government.

There is but one answer. We lawyers must approach the problem of the twentieth-century trend through our Bar Associations. These associations are the only organizations through which lawyers can effectively exert their combined influence. They are the organizations through which we can reach the American people with the greatest force and effect and through which we can best and most convincingly inform our citizens of the full involvements attendant upon developments in government.

When I say "associations," I purposely use the plural. The task which we face is a difficult and vital one. It should be met with all of the strength at our command. It requires the active support of the local associations, the state associations, and the national associations all functioning together and each in its respective field.

Our task is especially difficult when, as now, our nation is faced with war. At such a time, every patriotic citizen is willing and anxious to give to his government whatever is needed to achieve victory. At such a time we citizens are all too ready to accept any proposed government action as connected with the war effort.

Let there be no mistaking our position. We are ready to back the war effort to the fullest extent and to make any sacrifices necessary in our country's behalf. However, our obligation to the American people does not cease there. We must be ever alert lest minority groups take advantage of the war atmosphere to effect permanent changes in our American way of life. We must never lose sight of the fact that the most important thing to Americans—the thing which makes America what it is—is the unity of rights, liberties, and opportunities, which we call the American way of life. If that way of life is permanently lost, whether on the battlefield or through opportunistic minority forces at work on the home front, Americans have lost their most valuable and

cherished possession.

However difficult and sometimes distasteful our task may be, we lawyers have the duty and responsibility of speaking out on public matters. That duty and responsibility are clearer today than ever before in our nation's history. If the American lawyers will fully awaken to the dangers of the day, if they, privately and through their Bar Associations, will speak out clearly, simply, and forcefully on current developments, if they will become the aggressive fighting force of which they are capable, the people will know and understand the full implications of the twentieth-century trend. The processes of our republican government will then produce the results truly desired by the majority of the American people. I, for one, feel perfectly confident the result will be the preservation and continuance of our American way of life.

Thank you very much.

TREATY LAW-MAKING

BY FRANK E. HOLMAN

Your invitation to speak again at an Annual Meeting of the Washington State Bar is an evidence of your professional and personal goodwill which I deeply appreciate. Pat Maitland—a former President of the Canadian Bar Association and an honorary member of our Washington Bar, whom we greatly regret is no longer with us—used to tell me that there was nothing quite to “ex” as an ex-Bar president. You have disproved this observation by coming here at this late hour of the day to listen to a speech by an ex-president which promises little in the way of entertainment. I hope there will be something of vital interest to you all, if not of entertainment, in what I shall have to say regarding the rapid development of treaty law-making.

However, some of you in coming into this hall may well have felt like the deaf old lady who one Sunday morning was approaching the steps of the Cathedral of York when the Bishop of York, coming along, took her by the arm to help her up the steps of his Cathedral. At the top of the steps the old lady, who was nearsighted as well as deaf, inquired, “Will you please tell me who is preaching this morning?” Her kindly escort replied, “Why, the Bishop of York.” Whereupon the old lady said, “Will you kindly help me down the steps again?”

At the American Bar meeting in Chicago in 1943, when the House of Delegates created a “Special Committee to Study the Proposals for the Postwar Organization of the Nations for Peace and Law,” and