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Hidden Assets and Responsibilities

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Bar Foundation owning its own headquarters building.

I believe that if an actual start is made now towards raising a fund for this purpose, that it may be that we will not be required to wait until sometime in the hazy future to realize our dream.

Now ladies and gentlemen, I'm greatly appreciative of the fact that I have had the honor of having been your president for the past year, and I believe that if we are ever going to make a start on this enterprise that we should start now.

I don't know what I am going to do, not being dramatic at all, I just want it as a start, and I'm doing this with a promise to you that there will be no campaign of any kind at this convention to raise money for a headquarters building, but before I should cool off on this enterprise and while I am still in the humor for doing it, and to show you my appreciation for the past year having been your president, but most of all to actually start the ball rolling, so it won't be put off until next month or next year or two years, or three years or five years from now, but will just actually be started, I am going to, at this time, turn over to our secretary, with the understanding that she will not mix up this check that I am giving her with the one that she got this morning, a check for a thousand dollars to start this campaign. Thank you.

HIDDEN ASSETS AND RESPONSIBILITIES

An address by Loyd Wright, President
of the American Bar Association

We have just finished our 77th annual meeting of the American Bar Association. This meeting has, of course, been unique and unusually gratifying in that it was the occasion of dedicating the American Bar Center in which is lodged the American Bar Association's new headquarters and the American Bar Foundation research and library headquarters. You have all heard of this glorious accomplishment and every one who was there, I am sure, was thrilled because of the dignity, simplicity, and impressiveness of the ceremonies.

Coming home on the train I took occasion to read as much as I could of certain literature relating to our activities and I came across a report from a state in which only some twenty-eight per cent of the lawyers belong to the American Bar Association. Certain lawyers in this state when asked to join the association made inquiry as to how they would

profit from the activities of the American Bar Association. In contemplation of an answer it seemed to me that it was obvious that anyone who would peruse the annual reports of the American Bar Association or follow the numerous committee reports at the mid-winter or annual meeting could not help but be impressed with the tremendous amount of work done by so many outstanding lawyers throughout the nation, in an effort to further the dedicated purpose of the association to render public service.

In reviewing the activities of our standing committees and our sections, and the myriad of sub-committees of the sections, the question arose in my mind as to why such a volume of *pro bono publico* service by the profession at the national level was being so willingly performed in so recent years when but yesterday our chief effort was principally at local and state levels. I recalled to mind that the industrial revolution has finally enveloped the whole nation and in its wake there has grown up a new concept of government, as the result of which you and I as practicing lawyers have a completely and totally different problem than the practicing lawyers had twenty-five or thirty years ago.

I can remember when I first started to practice law in Los Angeles, that I felt quite adequate with the four codes on my desk and a modest library in which I could find the decisions interpreting the law. With these meager tools I felt I could answer with confidence most any question that a business concern might ask. We had no problems created by executive fiats, bureaus and agencies of a paternalistic government to harass us and involve us in uncertainty. Then too, geographically speaking, the limit of our practice was local. We were content to have our clients come from our home city and county. Indeed, it was an occasion when one came from another county, and he who had occasion to go to some other state to handle a bit of business was considered a great success. Now the whole theory of government has apparently changed. A centralized government, increasingly paternalistic in nature, has assumed, partly by reason of too great indifference on our part, the prerogatives of what most think were in the areas of government specifically reserved in the respective states.

During the era of transition of government from lower and state levels to the federal government in Washington, we have become more and more dependent upon Washington and our federal government has assumed more and more jurisdiction over our every act. No longer can you and I content ourselves with the familiarity of a basic law of a state

in advising our clients, but we must also use our best endeavors to ascertain which, if any, of the numerous federal agencies may have assumed or acquired jurisdiction over the situation. It therefore is quite obvious how absolutely necessary it was that we should activate our national association into a more articulate and responsive implement through which we might render greater public service at the highest level of government in assisting in the promotion, promulgation and the administration of federal laws.

Then it occurred to me that perhaps many who did not follow the travel of our concerted efforts might not have any concept of the many things done annually, from which all lawyers as well as all citizens profited. In this frame of mind I casually thumbed through a report of the chairman of the section of administrative law and found in this report many things that I doubt if many, even those in attendance, realized had been accomplished.

First, there was a discussion about certain jurisdictional matters relating to the Administrative Procedure Act, and I recall that it took the American Bar Association about five years to get the act through Congress and to a degree at least, bring under the shadow of the system of administration of justice in our country the numerous federal agencies that had been allowed to usurp judicial prerogatives and assume executive functions. The implications that must be drawn from the fact that American lawyers stood idly by from the turn of the century and watched the ever increasing tempo of the march of paternalistic bureaus, commissions, and agencies of the federal government encroach upon and consume what justly was within the jurisdiction of the state and even lesser levels of government, is both frightening and difficult to understand.

Thumbing further through this report it is disclosed that approximately two years ago the chairman of the section received a communication from the chief hearing officer of the Post Office Department who recited that since it had been established in the case of *Gates v. Haderlein*, 342 U.S. 804 (1951), that the administrative proceedings of the Post Office Department to deprive a person of receipt of any mail by virtue of his use of the mails for fraudulent, obscene or for lottery purposes, need not comply with the Administrative Procedure Act, the Chief Inspector's Office of the Post Office Department, through petulance had refused to bring any proceedings administratively whatever—but was proceeding solely by indictment. The chairman also received

correspondence likewise indicating a rather strong feeling from the then Postmaster General contesting the chief hearing officer's complaint, and in effect expressing satisfaction with the fact that the power of indictment was the arm that he wished to use.

This of course, is reminiscent of the gauntlet that business men have all too frequently had to run in the last past several years of *nolo contendere* pleas: paying fines rather than to contest a criminal trial.

I am sick at heart when I think that my government has in the past so indiscriminately in so many marginal cases used this black-jack device, rather than proceed on the civil side where there are no implications of crime involved.

The result of this position assumed by the Postmaster General was that the American Bar Association, in response to a joint report of the section of administrative law and the section of criminal law, passed the following resolution:

RESOLVED, that the American Bar Association favors legislation to secure, when the public interest so requires, the speedy impounding of mail addressed to a person against whom it is charged before the Postmaster General that the mails are being used to disseminate obscene matter or to promote or carry on a lottery or scheme to defraud, pending a determination by the Postmaster General. The Association, however, opposes such action without prior resort to a court and notice to the person affected. Therefore, it advocates that in any legislation to authorize such impounding the following procedure be provided:

The Postmaster General may file a written application in the United States District Court for the district in which the person affected resides or carries on business for an order authorizing him to impound mail addressed to the person affected for not more than ten days. The court shall forthwith give notice to the person affected as in proceedings for preliminary restraining orders and injunctions, or by registered United States mail, as the court shall determine. Upon a showing of reasonable necessity for such action in the public interest, the court shall issue the order applied for. After opportunity to the person affected for a hearing concerning the extension of the authorization, the court may extend the order for the period of the proceeding before the Postmaster General or for such shorter or longer period as the court shall deem proper. The burden of showing reasonable necessity for impounding the mail shall be upon the Postmaster General.

There is both a hidden asset here and a responsibility. The hidden asset, of course, is the fact that the standing of the American Bar Association in Washington is such that the chief hearing officer knew where to present the problems and knew that if presented and we

thought it had merit, we would take some action. The resolution and the legislation as a result thereof could not possibly have resulted but for the fact that for years the American Bar Association has been at work trying to improve the basic laws, as well as the administration of those laws at Washington. The responsibility was ours to see that this agency be reconciled into our system of the administration of justice.

Typical of the responsibilities encountered and constantly being fulfilled is the establishment of a committee on statutory negotiations. It will continue to occupy itself with so-called "accounting concepts" of the renegotiation board, with the failure of the renegotiation board to publish decisions or release any statement of standards by which it will be bound, as well as its announced refusal to be concerned at all with precedent. The mere stating of the purpose of the committee is sufficient to point out the necessity.

A better known activity, but still too little appreciated by lawyers throughout the country, is the continued effort of the American Bar Association to remove from civil service status, and to bring about an independent status of, the hearing examiners. We have advocated that these important semi-judicial officers should be independent, should be appointed either by an independent officer under federal administrative procedure or by the President, or by some other appropriate means, with proper grandfather clauses to protect incumbents, so that the hearing examiners will have independence from any agency control that might impair fair hearings and impartial decisions.

This report of the chairman discloses that his attention was called to H. R. 6200—83rd Congress, which was the Supplemental Appropriations Act, 1954. As introduced by the House Appropriations Committee and passed through the House it provided that the Comptroller General might review judgments against the United States rendered by district courts and the Court of Claims, and if he felt the judgment was one which it was proper to pay he could direct its payment; but if he felt in his judgment that it was one that should not be paid, he could certify it to Congress with the reasons why he had overruled the judgment for payment. There was not sufficient time to act through a section or a committee meeting. Consequently, the chairman took the matter up with the president who by a wire vote received unanimous approval of the board of governors, time being of the essence, to resist that provision of the act, and by reason of our resistance this provision was defeated in the Senate. So far as I know, there has been very little, if any, publicity given to this accomplishment.

In effect, it was proposed by the House of Representatives that the legislative, in conjunction with the executive branch of government should be a court of appeals having jurisdiction to overrule the duly established District Court of our federal system. In this day and age one would hardly expect such a proposal. It is inconceivable that either branch of the Congress would ever pass a law containing such a provision. Indeed, it is inconceivable to me that any member of Congress would introduce such a law. Nevertheless, but for the alertness of the American Bar Association we might have the frightening spectacle of a non-judicial body of the other branches of government overruling our federal courts.

These are but a few examples of the tremendous number of instances where the lawyer fulfills his responsibility through the hidden asset of the American Bar Association's good will based upon faithfully rendering public service at the national level.

There are, of course, as a result of the twenty-seven standing committees, approximately the same number of special committees, and seventeen sections with their two hundred and seventy committees, many outstanding activities that have been publicized and whose purposes and accomplishments are well known; by way of example, the section of taxation. At the recent meeting in Chicago there were thirty-two comprehensive reports dealing with practically every phase of the Revenue Code of 1954 presented on the program. There is not a person in this nation but who has been benefited, substantially benefited, by the constant assistance rendered the Congress by the section of taxation of all matters relating to this important subject.

Another matter of great interest and concern is the special committee on the administration of criminal justice. This committee, under the leadership of one of our most distinguished members, Mr. Justice Jackson, has undertaken a long range program to make a broad, thorough and impartial factual study conducted in the field to identify and evaluate the specific causes of breakdown, delay and ineffectiveness in the existing system of criminal justice. A second phase of its long range problem shall be the formulation of remedial measures. This is an undertaking long over-due and of which you and I as members of the profession and of the association can be justly proud.

A companion proposal that is presently being worked on and which is, I believe, of more interest to the state and local associations, is a similar study of the terrible problem of juvenile delinquency.

As I view the matter, the American Bar Association must principally concern itself with trying to arouse interest in the state and local bar associations to undertake this study. Certain it is that the people of the nation expect the lawyers to lead in this pressing and all important problem.

Another activity that I think needs special mention is the traffic court program. This is a special committee and it has been in existence, as you probably know, for several years. It has conducted a course of schools throughout the nation studying the traffic problem, educating the local officials concerned with traffic violations, and proposing appropriate legislation. Last year there were something over seven million cases of moving traffic violations. This means that seven million people had direct contact with our system of the administration of justice, at the traffic court level, and in the vast majority of cases, that was the only contact that they had with our courts. Their impression of our system of justice is naturally gained from this contact.

Through our traffic court program we are trying to impress upon the people everywhere that courts should be presided over by judges who have had legal training and who have been lawyers; there is a concerted effort in the program to point out the dangers that follow the practice too prevalent in some instances, of fixing traffic tickets or of permitting lay people to appear for the violators, whether these lay people be representatives of insurance companies, automobile clubs or any other group. Where the traffic court programs have been established there is a noticeable decrease in the violations of the law and a noticeable increase in the efficiency of handling the whole traffic problem. As an example of the appraisal put upon this activity of the American Bar Association by some of our political subdivisions, within the last few weeks this committee was engaged to set up and establish new traffic courts in one of the larger cities in the south.

It will be conceded, I am sure, that congressional investigations are a necessary part of our system of government. It will be conceded also that they have been utilized ever since legislatures were established. In recent years there has been a great hue and cry about legislators or congressional committees violating the individual rights of witnesses and persons being investigated. To meet this problem there was appointed a special committee relating to the law of individual rights as affected by national security. It has rendered and the house of delegates adopted its report proposing certain rules and recommendations of procedure

pursuant to which congressional investigations shall be conducted.

Certainly our people are resourceful enough and courageous enough to insist that this necessary adjunct to the legislative branch of government shall be carried on in a dignified way consistent with our concepts of the rights of individuals, yet realistic enough to recognize that communists and other traitors forfeit their right to call for protection from the very constitution that they seek to overthrow if such intention is proven under proper rules and by competent evidence.

One other activity that I think the local and state bars must of necessity become better acquainted with and do something about, is the recommendation of the American Citizenship Committee that at all levels of education students must be required to take American history and to study American government. I personally would go further and urge that no foreign ideologies should be taught in any school until the students have not only had these basic—and until recent years considered necessary—subjects, but also that they be required to have first had a course in ethics and have been taught something of the third arm of our branch of government, the judiciary.

It is frightening and unbelievable the number of young citizens who have not the slightest conception of what you mean when you speak of a government of balanced powers, and who have never read and many have not even heard of the Federalist Papers or other fundamental documents or theses explaining the theory of our government, pointing out the underlying philosophies of government by law.

There are those I know who think that the American Bar Association or an officer thereof, and in particular the president, should not speak of controversial matters, should not touch upon subjects that have a political connotation, and that he should confine himself purely and simply to those subjects that deal only with the law.

May I call your attention to the objectives of the American Bar Association as adopted by the House of Delegates at the annual meeting in 1951:

- (1) The preservation of representative government in the United States through a program of public education and understanding of the privileges and responsibilities of American citizenship.
- (2) The promotion and establishment within the legal profession of organized facilities for the furnishing of legal services to all citizens at a cost within their means.
- (3) The improvement of the administration of justice through the

selection of qualified judges and adherence to effective standards of judicial administration and administrative procedure.

(4) The maintenance of high standards of legal education and professional conduct to the end that only those properly qualified so to do shall undertake to perform legal service.

(5) The promotion of peace through the development of a system of international law consistent with the rights and liberties of American citizens under the Constitution of the United States.

(6) The coordination and correlation of the activities of the entire organized bar in the United States.

Under the first objective, not only is it our opportunity, but it is our responsibility to participate in the discussion of those things political that threaten or imperil our individual freedoms and our representative form of government. You and I as lawyers can no longer be content to participate only in the strictly legal activities contemplated to make us a better living and be oblivious to our responsibilities in the larger fields of activity and responsibility.

If you ask the average lawyer wherein lies the last bulwark against loss of constitutional rights, his answer will almost inevitably be "the judiciary." The courts, he will say—and above all the Supreme Court.

I would suggest to you that the role of the judiciary, and more particularly, the role of the Supreme Court, in the protection of our basic rights is too much emphasized. We cannot rely implicitly on the federal judiciary to save us from a gradual erosion of constitutional liberties.

First and most glaring is the fact that a Congress of a mind to do so can prevent the federal courts—and the Supreme Court—from considering most constitutional issues. The Constitution itself, generally speaking, gives absolute jurisdiction to the Supreme Court only over those cases to which a state is a party. The rest of the judicial power is subject, in the words of the Constitution itself, to such regulations and exceptions as Congress may prescribe. The courts themselves have surprisingly little to turn to for guidance. The Constitution itself is rarely explicit on these issues. *Stare decisis* is not of much help. Regrettable as it may be, the Supreme Court, and particularly in recent years, has reiterated that the principle of *stare decisis* has only limited application to constitutional issues. As Mr. Justice Jackson has pointed out, constitutional precedents have a mortality rate almost as high as their authors.

We are the only segment of the American people especially trained

in the administration of law, and it seems logical, therefore, that it should be we who have most to do with the drafting and consideration of the laws, either directly or through articulate influence in our respective communities. The scope of our opportunities are beyond comprehension, and the depth of our responsibilities is overwhelming. We must cease trying to get so much out of government and think more of our responsibilities to government. I think Chief Justice Hughes clearly and concisely set forth the situation when he said, "Whether our system shall continue does not rest with this court but with the people who have created the system." Or as was said by Charles Fairman, "To think of freedom of speech and of the press as some eighteenth-century heirloom, enshrined in the Constitution and guarded for us by the Supreme Court so that we have nothing to do about it but to enjoy it, is bad history and mischievous thinking."

We do not need to always ask the judges whether we are acting like good Americans. Proper use of the ballot box by an informed citizenry is the only true insurance that America has against the loss of its priceless heritage of individual liberty. My plea is that during the coming year you and I will re-dedicate ourselves to the principles on which our nation is founded and because of which our profession has prospered—unselfish service to the citizens in all fields of political activity, participation at all levels of government, and a realization that as a privileged class we must fulfill our trust to the public over and beyond the selfish duty premised upon self preservation.

OUR FORGOTTEN FINDING OF FACT

An address by the Honorable Clarence E. Manion

First of all it will be a reassurance to you to know that—at least according to my doctor, in a spirit of self defense my vocal cords will cease to function after a certain amount of exercise. This puts a time limitation upon this address which you will all enjoy anticipating. I expect eventually to get out of this vocal straightjacket. It came about because of an honest mistake that I made. A couple of years ago after falling into an evil association with the great Frank Holman, I thought that I could talk as loud and as long, if not as effectively, as he did.

I will say, however, at the outset that any journey for any distance finds its justification here in this room.

It has been my happy experience during the past half dozen years to