Washington Law Review

Volume 31
Number 4 *Annual Meeting of the Washington State Bar Association*

11-1-1956

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Recommended Citation

J. A. Gooch, Address, *Shall Advocacy Vanish?*, 31 Wash. L. Rev. & St. B.J. 358 (1956).
Available at: https://digitalcommons.law.uw.edu/wlr/vol31/iss4/13

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Legislators to support the proposed legislation."

On the motion of Mr. John Davis of Seattle the following resolution was unanimously adopted:

"WHEREAS, the members of the Tacoma Bar Association have worked diligently and untiringly to make this convention a success, and

"WHEREAS, to that end they have provided an excellent program and delightful entertainment which we have greatly enjoyed,

"NOW, THEREFORE, BE IT RESOLVED that we, the members of the Washington State Bar Association, in convention assembled at Tacoma, Washington, on the occasion of the annual meeting of the Association, do hereby express our sincere and heartfelt thanks to the members of the Tacoma Bar Association and their ladies who have extended to us Tacoma's famed hospitality, including gracious dinner invitations to their homes."

There being no further business to come before the meeting, the convention was adjourned *sine die*.

SHALL ADVOCACY VANISH?

An Address by Mr. J. A. Gooch, Member
of the Bar of Fort Worth, Texas

The subject of my remarks indicates that at some time in the past and as of now advocacy has been practiced. To me advocacy is the backbone and the real strength of justice in this great land of ours. The term "advocate" has been linked with the legal profession—and properly so—from the beginning of time. We are a profession that has always taken an objective point of view, as contrasted with the negative or defensive point of view, to the end that principles and ideals shall be maintained.

History records that the lawyer has been one who at all times stands ready to fight for principles, and, with every resource at his command, for what is right and for the rights of his clients; one who, by reason of that trait of character and by training, is ever ready to oppose tyranny in any form; one who is ready, or should be ready at all times to oppose the abuse of power.

We, I am positive, are lawyers by choice. In my opinion there are many ways to make a living in an easier fashion than constantly fighting someone else's battles. I dislike very much to see in the movies, on T-V and in periodicals the lawyer depicted as a scoundrel and a cheat. No other profession is so maligned as is the legal profession. It seems

to have been thus for some time, as our earliest dramas and literature make mention of the lawyer in that view. Did you ever see a lawyer in a movie or on T-V in the role of a hero? But so much for our popularity with the so-called entertainment world, these same critics when in trouble seek the best lawyer they can find in their judgment and then expect miracles. These same critics when in trouble, want and demand a real advocate.

History also records that the legal profession—the advocate—has had a hand and a great voice in shaping the destiny of the world, and particularly the destiny of these United States.

It will be recalled that the Declaration of Independence was framed by an assembly predominantly of lawyers—and, may I add, lawyers with a purpose and lawyers who were advocates—lawyers who dared set forth with specific certainty the views of the oppressed and then chart a course for the establishment of these United States.

Let us turn back to the year 1776 and review the position of these great advocates who designed and published the Declaration of Independence. The designers were great lawyers who dared bring an indictment against the sovereign of Great Britain—and not only did they bring an indictment, but advocated a remedy. . . . Let us read together some of the grievances that those great advocates asserted, some of which might well be considered as current grievances.

A portion of the Declaration of Independence reads as follows:

> The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

Then follow the *facts* as indictment against the yoke of Britain, and among the facts presented we find the following specific charges:

1. He has erected a multitude of new offices and has sent swarms of officers to harrass our people.
2. For depriving us in many cases of the benefits of trial by jury.
3. For taking away our charters, abolishing our most valuable laws and altering fundamentally the forms of our government.

Do these charges sound as if they were coming through arbitration and weak-spined compromises?

Following the Declaration of Independence and the enforcement of those declarations by force of arms, we adopted a constitution—clear, concise and readily understandable by all of the people. The constitution itself indicates that it should be jealously guarded—and by advocates who believe entirely in its teachings and meanings.

The first three articles of the constitution remedied the cause of two of the indictment which I have just quoted from the Declaration of Independence, when by their terms there were established three—and only three—branches of government, with well defined boundaries and with safeguards and prohibitions against wandering beyond those boundaries. Those separate branches, as we all know, were the Legistive, the Executive and the Judicial, in that order.

The seventh amendment to the Constitution remedied the other indictment which I quoted, when, by its terms, all litigants were guaranteed the right of trial by jury where the amount in controversy exceeded $20.00.

I would also mention the first amendment to the Constitution, which gave us *"Freedom of Speech,"* inasmuch as I invoke its protection in my remarks to you at this time, and I further state that that same first amendment created and suggested an advocacy proceeding and that its teaching is that advocacy should be practiced.

Some of you, if not all, are probably now silently asking me, "Just what do the quoted passages of the Declaration of Independence and the Constitution have to do with the topic you are to discuss?" I shall do my best to answer that question.

Many of you have seniority on me, both in years and in experience, and most of you can remember by reason of presence or by reason of historical reference the time when the Constitution of the United States was not referred to as "a flexible thing" to be interpreted by the yardstick of any pressure group. But on the other hand it was regarded by all as a definite and well-understood set of rules by which our lives and fortunes should be lived and preserved.

By the turn of the last century, our Constitution had withstood many and varied attacks by advocates who dared express their views concerning its meaning. Its provisions had been clearly interpreted by competent jurists who sought to interpret it in accordance with the thinking of the people who created it—and may I say, those interpretations were consistent and were generally accepted—advocates of both bench and bar had done a great work in seeing to it that the original concept of a government of the people, by the people and for the people be maintained.

Let us now talk of a new era—and of this era I had a front row seat. I finished law school in 1929 and had I not been presented with a shingle by a friend of long standing in July of 1929, it would have been quite a number of years before I could have acquired one from my own

resources. The depression and I began the practice of law at the same time.

Prior to entering law school, I lived in a small central Texas town, where one of our closest neighbors was the leading lawyer in that village. He was known far and wide for his intelligence and ability. He was ever ready to express his opinion, when sought, on any matter or controversy concerning the good of the community. He was not one to compromise a principle, regardless of opposition either in number or quality—I suppose it was through admiration of his steadfastness and positive thinking that I decided to study law—'though I must admit that my alternative prospects—picking cotton and milking cows—made my choice much more simple.

In law school we were taught by able professors that the Constitution of the United States was, in so far as government was concerned, the equal of the Ten Commandments in so far as morality was concerned. We were told and believed that the three branches of government were controlled by well defined boundaries and that these boundaries were not to be trespassed either by the other branches or by the citizens living under the Constitution.

We were told and believed that the pronouncements of the highest court in the land were carefully considered opinions rendered by outstanding jurists and scholars, with the able assistance of advocates. We were shown that well thought out principles of substantive law had been established—and we were told that we could rely upon established precedent in the practice of our profession. We were told that when we were to give advice to a client, we could inform that client that since the Supreme Court of the United States had established principles of substantive law, he could rely thereon in the conduct of his life and business on those established precedents—and we were told that any attempt on the part of any other branch of the government to deviate from those established principles would be certainly check-mated by the court of last resort. It was with this armor that we went forth to seek a livelihood.

Either with the depression or by reason of the depression, I have never understood which, I saw spring up gradually at first—and then akin to mushroom growth—countless administrative agencies, commissions and bureaus. I saw the alphabet distorted to where almost any combination of its letters would represent a bureau, agency or commission—I saw the courts by-passed—I saw each administrative

agency, sufficient unto itself, lay down a set of rules of its own, establish its own jurisdiction, and totally ignore all rules of evidence.

I saw a growing resentment on the part of the heads of some of these agencies against the lawyer as such. We all know of instances where the only prerequisite necessary to practice before a tribunal is to be present—no qualifications are demanded, and perhaps none needed—in that the head of some of those agencies is the lawyer, judge and executioner, and in most of those instances, the head of the unit himself is not a qualified lawyer.

With every alphabetical agency and bureau, each sufficient unto itself, came loose leaf services in ever increasing abundance and with ever increasing costs, since a weekly bulletin must of necessity be read before daring to tell a client what his rights or remedies might be on a given topic. As an example, I refer particularly to the decisions of the National Labor Relations Board and the wages and hours division of the Labor Department—those of you who practice in those fields know exactly what I am talking about. Each week brings new leaves.

And if these usurpations of judicial functions were not enough—let's take a look where we are headed in court practice and see if we are not allowing ourselves to become the "Last of the Mohicans" so to speak.

I refer specifically to the rules of court now in effect in the states of New Jersey and Pennsylvania—let's take New Jersey first—I have it on excellent authority that all cases in New Jersey are pre-tried by the court—which of course in itself is not so bad—although I do not yet believe wholeheartedly in pre-trial, for most of my experience with pre-trial has been where a settlement of the case, regardless of merit, is the prime object of pre-trial—but at the pre-trial in New Jersey, the attorneys for the opposing litigants are made literally to open their respective files to each other—to furnish each other the names of their witnesses—and to inform each other of the substance of the testimony of the witnesses under the penalty that, if an attorney omits the name or fails to reveal the name of a witness, he cannot at the trial of the case call such omitted witness, except under most unusual circumstances which are almost impossible to meet. Is that the proper way to achieve justice? It might be if the ideology it presumes were actually present, but to my mind and experience, to be fore-warned is to be fore-armed, and it has been my experience that cross-examination is the best test of the story of a witness, and by reason of being fore-warned, cross-examination is reduced to a dull routine, in that the element of surprise is completely eliminated, and the witness knows in advance

what his answers are to be—the vigilant, hard-working and conscientious lawyer and his client are penalized because they are prepared for trial, while the lazy borderline lawyer is aided to such an extent as to be grossly unfair. Believe you me, I am glad I do not have to practice in New Jersey.

Now let's take Pennsylvania. By legislative enactment, cases involving $1,000 or less are tried by a board of three members of the bar sitting as arbitrators selected alphabetically from a list of the lawyers in the jurisdiction of the court. Litigants not satisfied with the award may have a jury trial, but in that event they must pay the arbitrators' fee—about $25.00 each—which otherwise is paid by the county.

You say that is fine, that such a system eliminates the nuisance and non-profitable cases. But where does it lead and where will it end? The $1,000 figure could just as easily have been placed at $50,000.

And if these trends are not significant as to what is happening to our profession, let us review the agitation now prevalent in a great number of states to eliminate tort litigation from the courts entirely. Statistics have been compiled which show that over 80% of the courts' docket are made up of tort litigation. What will become of the trial lawyer, the advocate?

Some of you will say that is your selfish view being expressed. Justice can be served without an advocate. Is that true? I say it is not true, for the trial lawyer, the advocate, is the last barrier before tyranny. What did our forefathers say in the Declaration of Independence concerning usurpation? "He (the King of Great Britain) has erected a multitude of new offices and has sent swarms of officers to harrass our people—he has deprived us in many cases of the benefits of trial by jury—he has taken away our charters—abolishing our most valuable laws and altering fundamentally the forms of our government"—never were those phrases so apt as of this day.

Those who favor the departure from full dress trial where principle is involved by the more expedient method of arbitration and forced compromise use as their ammunition the age-old cry that court calendars are congested and delays work a hardship on litigants. This plea is not without merit in some instances, and we, the lawyers, have nobody to blame but ourselves, for we could, if we would, clean up every docket in the United States. We would just have to quit procrastinating and get our cases disposed of—I know a law firm that is trying to do something about it. The firm has six men in the trial department and they have entered into a pact whereby each lawyer is

fined $50.00 for every continuance or postponement he procures unless he can show by a preponderance of the evidence to the remainder of his group that the delay was absolutely necessary and not by reason of being unprepared or scared. These $50.00 fines go into a pool and are used for a fun party when the amount is sufficient for such purpose. I happen to know that the fund for this year is nil, and, according to those in the pact, it is hoped that the fund remains nil for cases are being disposed of, litigants are happier and know the results without the burdensome and worrisome delay in the day of judgment.

If we, as lawyers, will wake up to the fact that we are about to become extinct, we can do something about these encroachments and maintain a position where we can and will see to it that encroachments are stopped and eventually abolished and that we return to a constitutional government which proclaimed the advocate as the defender of that form of government. The cure cannot come overnight because we have slumbered and coasted with the times without realizing that we are gradually being relegated to the has been category.

Let us take a look at some of the results of administrative practice. More and more the lawyer must become the specialist because it is impossible for one man to keep up with the myriads of reports and digests that flow into a law office daily—and, I might add parenthetically that it is also rather hard to pay for these periodicals because they are not exactly cheap—with the result that either the specialty seeks the man, or the man seeks the specialty. Under the specialty system, the lawyer of necessity loses contact with the people in general and becomes business-wise—and sometimes otherwise—known only to a select few who require his skill. He loses contact completely with the people who sit as jurors—and to my way of thinking, a working knowledge of the thinking of an average juror is quite important to any decision where a factual question is involved. In my opinion, the specialty should find the lawyer, rather than the lawyer select the specialty, and only after having had a try at advocacy before a court and jury.

I do not mean to imply that all lawyers should be trial lawyers. Many lawyers do not have the temperament or the desire to do battle in court, and that I do not condemn. But I do say that every lawyer should have at least some trial experience either in the front seat or the back seat, so that he will have first hand experience in the niceties of psychological court warfare in order that he may learn not only to think quickly and in an emergency, but to show him that small and sometimes apparently insignificant matters are really important. For instance—a witness

while on the stand, before answering any question propounded to him on cross-examination, would cast a sidelong glance at his attorney. The cross-examiner noticed this trait and properly lengthened the cross-examination and went as far afield as he dared in an attempt to test the witness' knowledge of the matter involved. Having successfully diverted the witness' attention from the prime question in the case, he suddenly returned to the point with a question and followed quickly with a further interrogatory, as follows: "Now just how were you told to answer that question?" To which the witness replied after a long look at his counsel, "I have forgotten what he told me." The witness then broke down completely and justice prevailed. What would have happened had the testimony come from a prepared statement?

I think advocacy is the path that was laid out for our existence. We as a profession, by reason of training if no other, should be qualified to analyze most every situation involving matters referred to us—we are told that we must see clearly both sides of every controversy and then select fairly and honestly the best approach in which we can present our client's problem.

Many of you have been called upon to represent a litigant accused of a crime—sometimes with pay and sometimes without that necessary ingredient, because under our laws every person charged with a crime has a right to a trial by jury and a right to be represented by competent counsel—such a chore is not only our duty but our privilege—you all know of instances where at first blush an alleged crime seems so unjustified as to be revolting to a lawyer to defend—and I dare say that in a vast majority of such cases the crimes are just as revolting as they seem to be—but every man has a right to be found guilty by a jury rather than by an aroused public—and to my mind the saving of the life or liberty of but a single individual, worthy of being saved by reason of being not guilty, is worth all of the time and effort which of necessity go into the investigation and defense of an accused—and in that connection, I wish to pay tribute to that group of advocates, a member of which is Earle Stanley Gardner, of the neighboring state of California, who have dared risk the wrath of an opinionated public in carefully inquiring into and investigating cases where persons have been convicted of crimes who maintained, with some reason, their innocence. As you will note from the press, there have been several instances wherein that body, which is called "the court of last resort" has proved by perseverance and proper investigation that an innocent man has been convicted of a crime he did not commit—such an act is that of a

true advocate who is willing to take the time to see to it that our basic and fundamental concepts are not violated.

Turning again to the encroachment of administrative law in our courts, let us examine our law schools. Three years ago a questionnaire was sent to ten leading law schools in our section of the country in which the placement chairman in each law school was asked to conduct a poll among the senior law students as to their preferences of practice. The result was that less than 7% of the number participating in the poll, which incidentally was quite representative of the number involved, listed trial work as their first preference. Further questioning of a cross-section of those who did not list trial work as a preference revealed that the following were their reasons for preferring other fields than trial work:

1. Trial work is too hard and requires too much effort.
2. Trial work is on its way out.
3. Administrative practice is more lucrative.

Is that a healthy sign for our profession and for the survival of advocacy? I do not think so.

What is the remedy if advocacy is to survive? These are my thoughts:

1. Let us each dedicate ourselves to the principles of government upon which this nation was founded and fight singly and in assembly for the return of a state of affairs where decisions concerning our lives, liberty and fortunes are vested in the judicial branch of the government.

2. See to it by voice and by ballot that the judiciary is manned by men eminently qualified by education, experience and temperament to sit on the benches of our courts and men who have the courage to follow sound, tried and proper precedent.

3. Go into the law schools with seminars and lectures sponsored by our bar groups and attempt to sell our embryonic brethren on the idea that advocacy is worth maintaining and give reasons why. See that these men know that the survival of the nation depends upon our profession as the watch dog for the maintenance of a true democracy.

4. Preach on all occasions and to all forums the gospel of a government of the people, by the people and for the people, and that established rules for conduct which have been tried and found good should survive and be carefully maintained.

Let's stand up and be counted! Let's fight for what is right!

We must, if this country is to survive, take the initiative as a group

and as individuals—we must see to it that the way of life as outlined by those great advocates of the past—that individual rights as guaranteed by the Constitution—remain inviolate and firmly restored—we must awaken to the fact that only with positive thinking—positive action—both coming from a sturdy advocate—that we can escape a state of affairs where the individual rights are relegated to the whim of a select minority whose sole aim is power for themselves rather than for the good of this nation.

I am not a politician nor a candidate for any office—my political faith varies with the caliber of the man who presents himself for public office and the things for which he stands—so I am neither for nor against any political party as such—therefore I reserve the right to be critical of any form of government regardless of the branch which either protects or lends support to ideologies which tend to weaken the faith of our people in the future of this country.

The future of this country depends upon the restoration of absolute integrity and the person to restore that status is the advocate.

The philosopher Voltaire defined an advocacy proceeding when he said—and I believe I quote him fairly accurately—"Sir, I do not agree with a word you have said, but I defend with my life your right to say it." If we are to believe such a philosophy, let's say what we think.

Are we afraid to voice our opinions? Are we afraid to let our neighbors and the world know where we stand on the principles of our heritage? Are we to continue to sleep soundly or drift with lethargic indifference with the times? Are we ready to accept compromise of ideals and conscience rather than face the rebukes from those who would turn us into spineless referees? Are we as a profession content to allow this nation to become socialistic? Are we to lose our own self-respect by inertia? Are we to allow our heritage to lapse by reason of encroachments? Are we to be governed by selfish minorities? Are we to refuse to defend with our lives the laws of this country which created our great nation, nursed it into a place of prime importance, and established it as a powerful good?

I say that these questions must be answered with a resounding negative.