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"THE LAWYER, PUBLIC CITIZEN NUMBER ONE"

Commencement Address

by

Hon. Robert Elliott Freer
Commissioner & Vice Chairman
Federal Trade Commission

at the

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of

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(Cincinnati Law School)

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THE LAWYER, PUBLIC CITIZEN NUMBER ONE

In a ceremony of great dignity young American Indians of proved ability were accorded the "status of the brave," and thereafter shared responsibility of the tribal councils. Since it has been 30 years since I became a brave in the Tribe of Cincinnati, I am happy to share in this observance of your assumption of part of our responsibility. You have completed the academic phase of your indoctrination course which we call the study of law. But yours is not to be a magic transformation. Presumably older warriors among the legal tribe already have reminded you in cynical jest that the young lawyer's prime function is to grow older, and that like the law he is but a process and not the completed product. Additional testimony is that of an English barrister rich in maturity, achievement and clientele who observed that when young he lost cases he should have won and now when older he won cases he should have lost; and summed it up by indicating that, thus, on the whole, justice had been done.

Now that the idea is firmly implanted in faculty minds that you are lawyers, you have my best wishes toward the selection of discerning communities which speedily will discover the wigwam displaying your shingle. A blunt professor once counseled taking lawyer fathers and uncles into partnership as a sure-fire measure to accelerate hometown consumer acceptance.

My topic, "The Lawyer, Public Citizen Number One," almost expands itself. My topic is appropriate for this occasion because in essence it represents a pause to reflect on the grandeur of our profession. I will quickly pass over my reflections on the obvious, especially as I do not want this ceremony to partake of trial by ordeal. So many things concerning the lawyer, our friends and neighbors take for granted. For instance, the legally trained almost invariably are active and articulate participants in the economic and social life of town and country. Of course Mr. Average Lawyer gives his time to charitable enterprises and religious affairs; and he exercises conscientiously his right to the ballot. He is part and parcel of a mature, vigilant and enlightened electorate. His debates, altercations and contentions, whether expressed in the courtroom, on the stump around the hustings or in the town meeting, help mold public opinion. Any school child knows that from one Esquire's clashes in the courtroom with his brother Esquire on the opposite side of a case, many of our basic truths have evolved, as translated by another brother lawyer - His Honor on the bench.

We have our cultural side, too. Noah Webster, one of those who later "agitated for the calling together of the Constitutional Convention," compiled his first speller, forerunner of the dictionary, as a means for supplementing his income as a lawyer. Boswell of Samuel Johnson fame began the practice of law in Edinburgh as heir to a 10-mile manorial estate, predicting a brilliant future for himself. Our own beloved graduate William Howard Taft, to name a more recent lawyer whose accomplishments, besides teaching me Federal Procedure in this school, are too numerous to mention, wrote a very fine book entitled "The Chief Executive."

Still reflecting on the obvious, the economic facts of life may make legal services peculiarly available to the so-called entrenched interests. Yet traditionally there have always been those ready to afford advocacy to the underdog, testimony to our eternal vigilance in preserving our country's institutions. Of the fifty-five signers of the Declaration of Independence, drafted largely by 33-year-old lawyer Thomas Jefferson, twenty-six were lawyers, and among the 550 members of the French National Convention convening after the fall of the Bastille, 350 were lawyers. These undoubtedly represent the greatest efforts of all time to correlate abstract justice and the law. Their technique has been used since, but never before had men the faith or the ingenuity to direct pleas to so vast a jury. Those appeals were to the conscience of the world.

Past President Lashly of the American Bar Association has just returned from France, Italy and Germany where he tendered the understanding and aid of American lawyers to brother lawyers overseas upon whom Europe must depend for preservation of these ideals. So much for the American lawyer's contribution to the creation and maintenance of democratic institutions.

The legally trained are indispensable to a society where the welfare of the individual is paramount. Law is the only reasoned adjustment to human relations. It is the expression of the best aspirations of humanity. How different is the march of the political philosophy which seeks to challenge our own. Its grotesque and brutish pattern is now familiar. First there is the campaign of false propaganda, then terrorism followed by rigged elections, jailing of the opposition, and, finally, after execution of one or more of the leaders, there emerges the old familiar government by men rather than by law based upon principles and ideals of justice.

A past president of the Colorado Bar Association put it well when he said, "The lawyer is the product of democracy. When dictators seize power, they liquidate the lawyers. They want no lawyers to be in the way by asserting the rights of citizens." When Peter The Great visited London in the 17th Century he was amazed at the number of lawyers at Westminster Hall. He is reported to have said that there were but two lawyers in all his dominions and that he had made up his mind to have one hanged when he got home.

In the largest sense, then, lawyers are rightly called the "soldiers of our civil life." The legally trained are keenly aware of the ethical responsibility which the public trust imposes. Hence, the sharpening and refinement in the selection process among candidates for a career in law has more than kept pace with the raising of standards in the other professions. Though advocates were a standing order in England prior to 1255, and barristers as early as 1291, they were the creation of custom, not statute. Early in the 15th Century, Parliament provided that none but "good and virtuous" men, "learned, and of good fame," should be examined, sworn and registered as attorneys, and that any such found in default thereafter "shall forswear the court." The

substance of this British statute had its origin in French and Roman law but it came to the New World as part and parcel of the Common Law which served as the foundation of our American Law.

The number of lawyers in the States at the close of the Revolution has been variously estimated at from 300 to 700. That respectable standards of personal character were imposed and that many were men of distinction here in the Colonies is evidenced by the fact that 31 lawyers were among the Constitutional Convention's membership of 55. By the middle 1880's the profession numbered 70,000 strong. Efforts of the profession itself, through the bar associations and the law schools, in gradually revising upward our standards have met with general public approval. In a very real sense the graduates of today's law schools have the requisite technical training to admit them to this finest profession in the land.

Everyone can contribute to maintain the high standards which the public has come to expect. All of us need an outlet broader than our day's work. Participation in the activities of your local, State and National bar associations is such an experience. You will find friendly association and a medium for the exchange of ideas. Especially, the local association affords a channel in which to blow off steam. Such exchanges of ideas can go far toward divesting us of that characteristic which Mr. Justice Holmes attributed to judges and which Mr. Justice Douglas said lawyers incline to as well, by being "more likely to hate at sight any analysis to which they are not accustomed, and which disturbs repose of mind, than to fall in love with novelties."

In the bar associations you will find lawyers engaged in intelligent appraisal of proposals for procedural reform. There, in answer to social forces, sometimes is started the orderly movement of events which reshape some yet unconformed facet of the law to abstract justice.

Traditionally lawyers are rugged individualists. They are schooled to back their own decisions and to foster and depend on their own initiative. This may account for the fact that the percentage of participation in association activities is much lower in the law than for the other professions, medicine, for instance. Many of those not participating in organized activities, nevertheless, have acquiesced in, and contributed to, these advances.

The lawyer's role as officer of the court is important in the administration of justice. The degree of freedom individuals must renounce in our complex society is decided by democratic processes. The lawyer, however, expressly undertakes to forego more than other segments of our citizenry. Essentially the trust thereby imposed is that he will do his part toward conducting actions in an orderly manner and free from political, racial and religious animosities, to the end that causes be tried and decided on their true merits.

Far from being a thing separate and apart, the bar as a matter of fact is a splendid index to public virtue. Corruption of its standards

inevitably would infect the whole body politic. Former Chief Justice Hughes, with whom I once had the privilege to cross swords in a case before the Interstate Commerce Commission, stated democracy's stake in the bar, as follows:

"With a sound, courageous, and independent bar, a foe of demagogy but a friend to rational improvement, vindicating its expert leadership by intelligent conception of the interests of the community, and by its zeal for the better administration of justice which is its especial care, democracy will not essay its tasks in vain."

I would be derelict in my duty as your guest if I failed to make some reference to the shape of things to come in the practice of law and in the science of jurisprudence. Obviously the bench and bar will and must continue their laudable preoccupation with the subject of speeding up the administration of justice. Justice delayed is justice denied; yet summary judgment is no panacea. Great progress already has been made toward those ultimate goals, speedy trial or hearing on the one hand, and full protection of the rights of litigants on the other. I look for no great increase in specialization, but its continuance is plainly indicated. In the field of administrative law, certain sections of the newly enacted Administrative Procedure Act will tend toward bridging the gap between the general practitioner and the specialist in practice before many Federal agencies. Its influence likely will spread to State agencies. International law is still a frontier, but the future of all law well may depend upon how well that frontier is fortified and defended against the opposing ideology of force. Despite the oft told story of a 19th Century Commissioner of Patents who resigned because everything possible of invention had been patented, that field remains bright, and far-reaching changes have been made in the field of trade-mark law.

Further on the subject of things to come, I believe that lawyers will continue to enjoy the abundant life, the greatest blessings of which are as abstract as the ideals of their jealous mistress, the law. Rich in fellowship, too, are lawyers, as Shakespeare observed centuries ago:

"And do as adversaries do in law
Strive mightily, but eat and drink as friends."

"Drink," may I point out, is used in its metaphorical sense. Be assured that neither Shakespeare nor I wish to counsel an intemperate course.

Lastly, I believe that increased public confidence and respect will inure to our legal institutions, provided we steer our course on the beacon of our duty as officers of the court, avoiding the shoals of crass commercialism, a commercialism so well illustrated by an anecdote related recently at the American Bar Association meeting in Cleveland by my British barrister friend, Member of Parliament and former Counselor of the British Embassy in Washington, Brigadier John Foster. He had for his topic the subject "The Barrister in Parliament" and he

stated that there were not many of them and that such members were not too well thought of in Parliament, perhaps because too often too many people passing the Inns of Court on a warm day could overhear one barrister in conference with another say, "What, settle the case and see the estate frittered away among the beneficiaries"?

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