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How the Legal Profession Can Aid The Cause of Good Government

By HON. KIM SIGLER, *Governor of Michigan.*

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Anything can happen in the legal profession these days.

There is one thing I would like to see happen, for the good of my own profession and for the cause of good government: A re-awakening in every lawyer of the spirit of public service and a personal interest in government.

Without this spirit, very real dangers can confront us; with it, much can be done to improve our own professional standards and the quality of our government.

The lawyer, it is true, is no less awake to the needs of public service than the average good citizen of other professions who will not interest himself in government; but he has a greater responsibility because, by training and experience, the lawyer is the man best qualified to lead his community on matters of public interest.

In our early days as a nation, the lawyer was the natural leader in good government. His professional position made him a respected citizen when counsel was sought. He responded unselfishly to the call.

With the development of educational opportunities and the expansion of communication facilities, an informed public felt less dependent on the lawyer for advice on general subjects. Therefore, the decline of public leadership in the bar has not been so much a refusal of lawyers to serve, as a feeling by a more informed public that such services were increasingly unnecessary.

In the early days, the original issues of government presented involved Constitutional issues which only the lawyer could deal with effectively. As time passed, these Constitutional issues were, in a large measure, settled by the courts and questions of policy were then presented. When the storms and strains of deciding early issues had passed, the people receded into a state of lethargy, permitting their government to be taken over by those who were willing to serve in public offices, whether or not they were qualified by training, experience, or integrity. Infrequently, the public had a rude awakening when examples of misfeasance in public office came to their attention.

The bar, together with the public, was satisfied to let government run by proxy. The business of government is too impossible to each of us to run on such a basis. We must be watchful and jealous of our liberties, lest they be lost to us.

The medical profession knows that socialized medicine is becoming a

definite possibility in this country, and accordingly is beginning to take steps within its own ranks to combat that threat.

How many of us have realized that without certain safeguards set up within the legal profession, socialized law also is a possibility? It is true that there is yet no Congressional bill like the Murray-Wagner-Dingell bill for state-supported medicine, but that is no excuse for complacently and smugly ignoring the threat.

Service is the surest way to prevent the curse of socialized law—of having a government agency come in and tell the lawyers whom they should take as clients, what their compensation should be, and all the rest. Service is an old-fashioned word which too many citizens in all walks of life have allowed to fall into disuse. There should be a revival of the ideal of service.

Too long have we delayed the renaissance of personal responsibility in the business of our own government. In this move to recapture government for the people, the lawyer should play an important role. I believe he will respond to the challenge as he did in the past. How then, can he contribute to good government?

1. By the encouragement of members of the bar to serve in any worthwhile public capacity. Their answer might be that the personal sacrifice is too great because of the loss of income. While this is true, some lawyers are making this sacrifice, and many others could. There can not be good government without sacrifice by some.

Unfortunately, such sacrifice often goes unappreciated by the public, and criticism may be the sole reward. A growing appreciation by the public of what public service entails might be very helpful in getting the type of men we need. Bar associations, through public relations programs, could be of service in bringing to the average citizen a general consciousness of the many problems which confront the men and women who serve their government in an official capacity.

2. By bar association sponsorship of active legislative committees to study not only proposed legislation affecting the legal profession, but all suggested laws.

The legal profession could perform an outstanding service to the public in this respect. Every two years, the legislature passes anywhere from 250 to 500 new laws, or modifies old ones. It considers hundreds more each session. Theoretically, laws are passed for the greatest good for the greatest number of citizens.

Frequently, however, it seems our statute books have on them legislation which at best benefits only a small group and sometimes works a hardship on the majority of the people. Some are clearly nuisance laws, while others are well-meaning but do not accomplish the purpose for which they were passed. Still others have outlived any usefulness they might once have had.

The public has a right to be protected from a flood of laws, and every law that is not, or cannot be, enforced is worse than no law at all.

An active legislation committee, therefore, could serve in two ways: Study proposed laws before they are passed and give publicity to their findings; and serve in an advisory capacity for the repeal of unwise, unnecessary or unworkable laws now on the statute books.

The average citizen, untrained in the fine points of the law, often needs expert advice before he makes up his mind on a matter. How helpful it would have been to the State in its current financial crisis if more public-spirited lawyers had spoken up and explained what the diversion of the sales tax would do, or had assisted in making the amendment a workable one instead of the ambiguous provision which had to be taken to our State Supreme Court for a legal decision.

I suggest that the legislative committee of the bar association study every bit of proposed legislation with the following questions in mind:

1. Is it administratively feasible?
2. What will its effect be on the citizen?
3. Will it accomplish what is intended?
4. Will its apparent benefits outweigh the restraints which necessarily follow all new legislation? Financial burdens and other liabilities frequently result from new laws.

I am convinced that if there were public discussions of pending matters, with attorneys taking the lead, resulting statutes would be of a much higher order. There should be none of this business of sitting idly by while bad laws are being passed.

Such a service by lawyers interested only in the general welfare of the State, without any special axe to grind, also would be a help to a legislature which often is subjected to terrific pressure from special groups and needs disinterested, expert advice.

It is a physical and mental impossibility for the lawyer, let alone the private citizen, to keep abreast of all the state and federal laws and rules and regulations. While there is not much that we in Michigan can do about the federal problem, the bar associations could perform a great service to the State by working with the legislature for the repeal and elimination of unnecessary laws, and the consolidation of others.

3. The legal profession can help the cause of good government and the general welfare by encouraging the bar association committees on ethics and grievances to function actively in all cases to see that the high degree of professional integrity we all prize is maintained, and that public confidence in the profession remains high. For instance, we should make sure that exorbitant fees for legal services are not charged to those who need our advice but cannot afford to pay high fees.

The various bar associations could—and should—expand existing legal aid departments and establish new ones where necessary to serve as referral

agencies for the men and women who need legal aid but do not know to whom to go. This would be of great assistance in curtailing the activities of the "curbstone lawyers," who all too often give freely of bad and costly advice to the uninformed layman.

4. The legal profession working through its bar associations could awaken a public realization of the need for more adequate pay for the judiciary in many parts of the State. Michigan has an outstanding judiciary, free from the abuses which have been allowed to creep in in some other states, but in many parts of Michigan the judges are sadly underpaid for the functions they have to perform. Moreover, without any provisions for a retirement income when they become ill or for their declining years, many must continue to sit on the bench at a time when they can no longer perform the services required of them. This becomes an economic problem.

This, on the whole, makes the position unattractive to many well-qualified men who might otherwise aspire to contest the incumbent judges, or seek to fill vacancies. It is not part of our democratic system to perpetuate one person, no matter how capable he may be, in office.

For that reason, I advocate that the bar associations work actively to bring the salaries of all judges to a level that will adequately remunerate present members of the judiciary and attract others to it. I also urge support of proposed legislation to provide a pension for judges when they reach retirement age.

5. The lawyers, through their bar associations, should work actively to bar boards and commissions from sitting as judicial bodies, especially on appeals from their own findings.

There has been an alarming tendency in this country during the last fourteen years to substitute administrative interpretation of laws for the judicial interpretation which is one of the most important aspects of our Constitutional system of government.

This is a tendency which the bar associations and the individual lawyer, serving both as a private citizen and as an arm of the court, should condemn and start fighting right now.

It is my firm conviction that the executive branch of the government should have no power over the judicial interpretation of the laws. His only connection with the judiciary should be on the occasions when he is called on to appoint a judge to fill a vacancy, and to see to it that the laws of the State are administered.

Instead, we see all kinds of people acting as judges—members of boards and commissions who sometimes have no legal training, or only a limited experience in courts.

This is absolutely contrary to our concept of government which as a safeguard to the rights of the citizens of the United States directed the separation of the powers of the executive, legislative and judicial branches.

Some lawyers are partly to blame for this so-called "streamlined govern-

ment," or mis-government, we exist under today. It has resulted, partially, because too many lawyers are too prone to adjourn and postpone decisions in the lawsuits they are trying—conduct often condoned by the courts. As a result, through a desire to hurry matters along, a system of administrative interpretation of rules and regulations has developed.

Any lawyer who has ever tried a case before either a State or Federal board or commission can point out some of the evils inherent in such a system.

The boards and commissions are answerable only to the executive who appoints them. Therefore we have an administrative, or political, determination of the law instead of a judicial decision. These administrative bodies often are too inclined to promulgate rules and regulations which will carry out the administrative policy, either of the department or the chief executive, rather than adhere to the law passed by the legislative branch of government.

Moreover, evidence presented at the hearings is gathered by a staff employed by the board which is considering the case. Human nature being what it is, it is natural for the board to give great weight to the evidence or information presented by its own men.

The greatest evil in this practice of administrative bodies usurping judicial functions lies in cases where the boards or commissions not only decide the facts, but act as an appeal board on the same cases which they already have decided. It is ridiculous to imagine that any man is qualified to pass judgment on the merits of his own previous decisions, but it happens every day.

There is a remedy for this situation, one that is both simple and workable.

I propose that as soon as practical, all state boards and commissions be stripped of their right to hear appeals from their own decisions.

Instead, I would recommend a new court to hear all appeals from commissions. Such a court would have several members, each a specialist in various fields of government such as utilities, workmen's compensation, unemployment compensation, labor and liquor.

This court could perform two valuable functions: It would give full judicial review to all cases arising from the administrative decisions of the boards; and it would relieve the State and Supreme Court of a heavy burden and leave it more time to devote to other judicial duties. This method also would result in a more prompt determination and disposition of cases.

Perhaps some of you may raise the question of expense. Certainly, the salaries for such a court would have to be adequate to attract competent talent. But there also would be compensating savings.

A special appeal court could result in the reduction in the number of members on many of the full-time boards, and much of the secretarial and clerical help also could easily be dispensed with. The cost of this new system could conceivably be less than that under which we are now operating.

Expense, however, is not the primary consideration. The important thing is to develop a more efficient, more just administration and interpretation of laws, rules and regulations. This must be done within the framework of our Constitution, or we are in danger of losing by our own negligence and indifference the important safeguards to individual liberties that are essential to our system of government. At a time when the false prophets of foreign systems are boring for a foothold in the United States, it is nothing but folly to permit any weaknesses to develop in our own system.

There is no question about it. The lawyer has a great responsibility for good government, both as a well-trained individual and as a member of the bar associations which can exercise leadership in this respect.

It is a challenge to every attorney and every member of a bar association to answer demands for his time as a public servant, to interpret and explain to the public the meaning of all types of new laws, and to work to check the spread of the administrative courts.

The lawyer must consider himself not only a branch of the court, a specialist in his own field, but also as an apostle of good government.

New Members Admitted To Bar Association

Miss Onalee Brown, Harold Dwight Lutz, Arnold Reeve Gilbert, Woodruff Anderson Morey, Willard Strong Snyder, Robert Hendricks Darden, John Joseph Weber, Theodore Jean Kuhlman, and Harold C. Greager.

Widow's Allowance

By C. EDGAR KETTERING, *County Judge*

From the frequency of my conferences with attorneys on the subject, I think it may not be amiss to comment on two phases of the law of widow's allowance in estate matters:

1. The case of *Wigington v. Wigington*, 112 Colo. 78 seems to have settled the proposition that a petition for widow's allowance must, like any other claim, be filed within six (6) months of the issuance of letters of administration; the order for the allowance, or the widow's choice of property (cash or specific property) need not be made within such period. Such case also states that the petition should be sworn to and recite that the widow is a resident of Colorado. It would also be good practice for the petition to recite the date of the issuance of letters.

2. There seems to be some confusion as to the meaning of Sec. 211, Chapter 176, and the wording is not too clear. I believe the statute means that where the deceased left a widow only, or a widow and children born to such marriage, the allowance to the widow shall be \$2,000.00, with nothing to the children. The division of \$1,000.00 to the widow and \$1,000.00 to minor children applies only where such children are the children of the deceased but not the children of the widow; in other words, are her step-children.