

January 1944

Fundamental Observations

John R. Clark

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

John R. Clark, Fundamental Observations, 21 Dicta 263 (1944).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

Fundamental Observations

With most of its members in the armed services, the Junior Bar Section elected as officers: William R. Newcomb, Denver, as Chairman; Warren Kent Robinson, Denver, as Vice-Chairman; Ruth Gottlieb, Denver, Secretary; and Donald M. Leshner, Denver, Treasurer.

A group of representatives from each bar association in the state met on Friday morning to discuss real estate standards. This meeting was called by Edward J. Wittelshofer, state committee chairman, to bring about a uniform state-wide system of real estate standards to replace the present county or regional standards now in effect in many parts of the state. This meeting laid the groundwork for a system of standards which it is hoped to be put into effect in the near future.

The convention was preceded by a meeting of the district judges' association on Thursday. This group discussed methods of court administration with the clerks of the various courts. The association selected Judge Henry S. Lindsley of Denver as President for the coming year.

The county judges' association also met Thursday and selected as its officers Wm. E. Buck of Boulder, President; Judge Irvin E. Jones of Colorado Springs, Vice-President; and Judge Hubert Glover of Pueblo, Secretary. The county judges' association decided to sponsor legislation relating to the same type of legislation which will be sponsored by the bar association and in addition certain amendments to the proposed code which will also be sponsored by the probate, real estate and trust law section.

Entertainment at the Friday luncheon of the convention was provided by the El Paso County Bar Association who secured Paul Fox, an expert in the art of legerdemain, and the Saturday luncheon group were entertained by a very delightful biblical story presented by T. E. Munson of Sterling.

Fundamental Observations†

BY HON. JOHN R. CLARK*

The year hand on the clock of Father Time has again completed its circuit and we are privileged once more to extend our salutations and greetings to this gathering of grand fellows—the bar of Colorado—in convention assembled. It is our sincere hope that by means of this meeting you may not only satisfactorily transact the business of your association and, while so engaged, gain much information and useful knowledge to aid you in your future labors, but also that from it you may derive a degree of relaxation from the grind you have been obliged

†President's Annual Address, Colorado Bar Association, October 13, 1944.

*District Judge, retiring president Colorado Bar Association.

to follow during these past trying months. Also, that you may experience much joy and pleasure through your association here together and may become inspired with new ideas and new ideals to sustain you over the rough spots until we meet again.

The past year has, in many respects, been difficult; circumstances and situations frequently presenting hindrances and obstacles that only a brave heart and courageous soul could surmount. Due to the stress of war new and strange conditions affecting the social, political and economic structures of all peoples have presented themselves, and all of which are of deep concern to lawyers. Anxiety over the welfare and safety of loved ones in the armed services of our country has not added to that peace of mind one involved in attempted solution of such knotty problems should like to enjoy. With some three hundred licensed Colorado lawyers gone from their desks to active duty in various military assignments, those who have remained to carry on in the practice have been overworked. Regardless of this added burden, the great majority of us left on the home front have answered the call of duty to contribute of our limited time and resources in the performance of many war-connected tasks.

It may not seem here remiss that we be reminded of how, during the early stages of this superconflict, in the eyes of many military and governmental authorities, lawyers, as a class, were considered useless from the standpoint of war service. With brutal frankness we were appraised in this connection at "less than a dime a dozen." Unwilling to sit back and sulk under such a rebuff, we dug in our toes and searched about for ways in which we too might demonstrate our patriotism through service. It is not my purpose here to detail the many important functions we found open to us, nor the very worth-while services we have rendered. Some of these will be demonstrated here at this convention; others you well know. Suffice to say that in many present military and service activities legal talent and law-trained personnel is today recognized as essential. We not only have convinced those who first ridiculed us, but we have won our place in the sun, retained our self-respect and now enjoy the confidence and esteem of all fair-minded persons who know anything of our war-connected activities.

Opportunity is now afforded me, should it be my pleasure, to report to you my activities in your behalf during the year that it has been my privilege to serve as president of your association. This I choose to forego, since it would be but idle effort. What has been accomplished you already are, or should be, acquainted with. The various reports of committees to be presented for your consideration give further detail. Wherein we have failed to attain desired results is now water under the bridge and useless to account. We have taken pride in the accomplishment of certain objectives and felt chagrin in our failure

of success in others. Officers and committees have encountered exceeding difficulty in finding available time, even at considerable sacrifice to their private affairs, to accomplish the work of your association. Regardless, many committees have labored long and well in your behalf. Some have remained dormant. To such as have carried on in the face of these difficult circumstances, words fail to express my personal gratitude, and they are entitled to yours. In casting up the score to determine whether or not your president is entitled to a passing grade, we pray that your judgment may be merciful and tempered with charity. May it be said, at least, that he has tried!

Regardless of objectives completed or unattained, one may not serve a year in this capacity without, through such experience, reaching certain deductions concerning things which either had not occurred to him at all, or had been only hazy in conception beforehand. Therefore, rather than devote this report to problems on the road over which we have already come, I conceive it to be a higher duty to undertake to set forth certain conclusions and observations which, in my humble judgment, are foundational to the success of your associated interests.

I.

While I, personally, have been accorded full respect and every courtesy to which the high office of president of your association is entitled, and for all of which I am duly appreciative, nevertheless the fact remains that not only your state association but likewise its affiliated local associations are frequently criticized by certain of our own members. Sometimes objection is voiced either as to policy or method with respect to some project under way, or perhaps already completed. More frequently, the critic repeats the old, hard-worn query: "Why don't *they*?" "Why waste time on the bar association? *They* don't do anything." By "*they*," such a griper refers to the officers and committees of the association. But who is this association? It is you, Mr. Lawyer! You lawyers from Denver and Durango, Leadville and Loveland, Greeley and Grand Junction, Colorado Springs, Steamboat Springs, Pagosa, Idaho Hot Sulphur and Glenwood Springs, and from every other Springs, valley, prairie and mountain town of Colorado. This is your association! Yes, Mr. Critic, yours, too! If it isn't doing anything, or its program or policy in what it is doing doesn't suit you, that is your fault and is probably due to the fact that you are standing on the side lines with the hooters instead of being in here pitching with the rooters. Let us argue out these diversities of opinion within our family circle, reach agreement in accordance with majority opinion and then unite behind the program whether or not we like all its aspects personally. We lawyers are target enough of brickbats hurled our way by those not of our profession. Let us be of one mind; get together, be together and stick together, hell or high water,

and we shall enjoy the respect, if not the admiration, of all well-disposed men. Our resolutions will have greater effect, our opinions more respect, and our petitions more consideration

II.

Somewhat along the same train of thought that prompted the above observation is another matter which it seems to me should be mentioned, and here again I am not prompted by any personal experience but only by desire to clarify what to me seems a misconception in the minds of some. My remarks are in no wise personal but intended only for the good of the organization. Some of our members seem to have the impression that their sole duty to the association, aside from payment of dues, is to select and elect its officers. That from then on everything is up to the officers—a "Let George do it" attitude. In the first place, it is unfair to place this responsibility entirely upon your officers. Secondly, even if the officers are willing to undertake the full task, they cannot do the job without help from the membership and lots of it. Committees are appointed for certain purposes. Some function expertly and smoothly; and some not at all. But most importantly, and the thought I want to stress, is that the form of government of the association is representative. In theory your officers are your servants and not your masters, and all of them prefer to be so regarded. It is *your* association, not *theirs*. You should determine the policies and program and direct your officers to execute them. This you may do here from the convention floor, as you are the supreme authority, if you care to take the time to formulate your programs, but that task usually cannot all be accomplished from only one general meeting a year. Therefore, the Board of Governors is set up as the legislative body, charged with the duty of formulating such policies as you may direct or approve, or as to the board, as your representatives, may seem fit and proper. I urge that all affiliated locals work closely with their respective representatives on the Board of Governors. Your officers, and your Board of Governors, prefer that they be directed in their actions by you, rather than be left to flounder along as best they may, taking the chance that what, in their judgment, may seem wise may be considered otherwise by you.

III.

The report of your Committee on Grievances and Ethics published some weeks ago in *The Weekly Journal* bespeaks the reliability and high standards of the Colorado Bar. During the past year, however, there have come to my desk direct, three separate complaints against lawyers of this bar concerning collection items: One from a client, one from a forwarding agency and one from a forwarding lawyer from another state. Feeling sure that no breach of ethics was

involved in any instance, I did not refer any of them to the Committee on Grievances. I have not been advised, but I venture the guess that the committee had a number of such instances called to its attention. Now, I am not concerned over whether such items are successfully handled. I am mindful that forwarders of even small accounts, and especially forwarding agencies, can and frequently do make nuisances of themselves by insisting upon prompt replies to useless inquiries, and often demand more time and attention than many other matters of far greater importance require. None the less, we must recognize the fact whenever we fail to answer inquiries, even though useless ones, and eventually create the feeling on the part of client or forwarder that his business is either being neglected, improperly handled, or, and worse yet, that the collection has been made and remittance is being withheld, we plant the seed of distrust and subject not only ourselves but the whole legal profession to criticism. In my opinion, failure of full public confidence in lawyers as a class is traceable to our engagement in commercial transactions more than to any other single branch of practice. By its very nature it relates professionalism too intimately with commercialism. The result is a difficult, if not a dangerous, situation. Even though much progress has been made within comparatively recent years to eliminate many of the pitfalls of such alliance, and that many high-minded and very ethical lawyers engage in this line of work, we also must recognize the fact that much of that class of work is actually performed by those who are not lawyers and who care nothing for the standards maintained by lawyers. Also, that for their transgressions we, too, must suffer. Because of these circumstances, and other reasons which I need not detail, but which will occur to you, I am firmly of the belief that if the lawyers of this association who handle commercial items should organize among themselves a section at which these various problems might be separately discussed and considered much effective reform and regulation could be accomplished, resulting in great benefit to those participating in the section, as well as considerable good to the whole bar. I recommend the formation of such a section.

IV.

You have doubtless all been following rather closely the agitation among bar associations and lawyers throughout the country with respect to the enhanced growth in number as well as in power of administrative agencies. The American Bar Association has taken hold of this problem in a big way, and many state associations are following suit. The California Bar, particularly, seems to have accomplished much with respect to state agencies. Your Committee on Improvement of Judicial Administration has done some work along this line, but this is too big a field to add to that committee's work.

★ ★ ★

Reelect EUGENE

Millikin

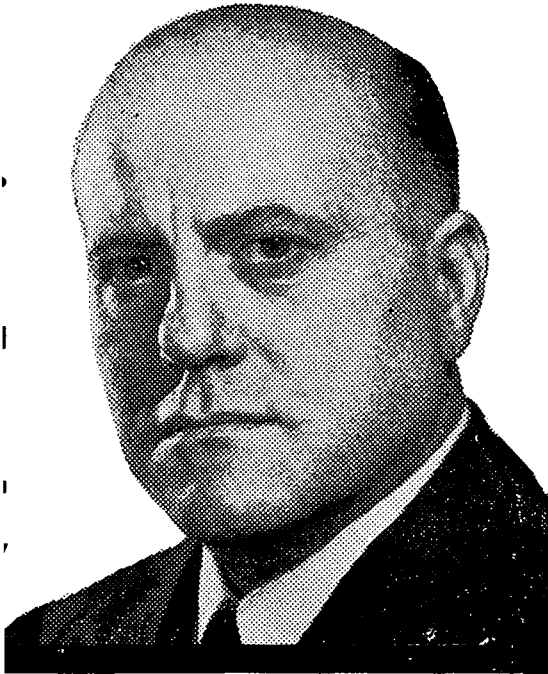
Your **REPUBLICAN**
U. S. SENATOR

Election, Tuesday, N

★ Senator Millikin has received
important Senate Committees which do
Communities are of direct and especial
Irrigation and Reclamation, the
member of the Committee on Finance
tion, as well as the Committee on
Manufactures. His work on the Draft
the recent National Republican Con-
secured inclusion in the Republican
first time, gave comprehensive recog-
National attention, and pledging to

Senator Millikin is fifty-three years
driving force. He served in the
domestic and foreign service. He was
He has been active in veterans' affairs

KEEP THIS ABLE MAN



cognition in his appointment to irapor-
work of the Senate. Three of these
cance to Colorado: Mines and Mining,
nate Silver Committee. He is also a
handles most of the veterans' legisla-
e and Forestry, and the Committee on
mittee of the Resolutions Committee of
was notable because he fought for and
of the Western plank which, for the
f Western problems deserving especial
ican Party to their solution.

husky. He has enormous energy and
ld War and won distinction in both
ed with the late Senator Karl Schuyler.
n securing legislation for their benefit.

WORKING FOR YOU

Therefore, I recommend the setting up of a separate committee to make such study and suggestions with respect to this important matter as may seem proper and practicable. Further, I would urge the personal interest and close co-operation of every lawyer in the state in the work of that committee, as it seems to me very vital.

V.

Throughout the year the office of your president has been besieged by solicitations to lend or pledge the support of the Colorado Bar to numerous movements designed for and said to be in the public interest. Many were perhaps worthwhile and worthy of support, but to all such as did not pertain directly to lawyers or the work of lawyers we declined participation. We are not designed to conduct ourselves in the capacity of a service club, nor is it wise that we undertake to do so. We can acquire ample enemies for ourselves even when we confine our activities to our own field and mind our own business. Should any member of this organization individually desire to lend support to such projects I should be the last to criticize him but my firm belief is that your bar association should confine its activities to things of concern only to lawyers as lawyers and not as members of the general public.

Without some amplification this statement might be misunderstood. No profession, no group of persons, more seriously regards the call of service in the community or in the public interest than does this great profession of ours. In every important movement of that character lawyers are to be found at or near the fountain-head. This is proper and desirable because lawyers, by training and experience, are particularly fitted for such leadership. But these activities attract lawyers as individuals, and are not such as their bar association should participate in. On the other hand, the program of the associated bar is not and should not be one exclusively of self-interest. Whatever aspersions may have been cast our way, no one has yet accused us of being a "pressure group," and my hope and belief is that no one ever can seriously make that charge. Should we undertake to use our concentrated power in accomplishment of a purely selfish purpose, members of our own organization would be the first to condemn us. What we do, while of benefit to us, is likewise in the public interest.

We undertake problems of legal procedure and administration. Frequently advocated reforms mean sacrifice of dollars in our pockets, but we promote them nevertheless in the interest of justice and public welfare. We are interested in legislation because statutory enactments constitute a huge source of all our law, and law is the raw material in which we work and from which we build. From the nature of our work, and in natural consequence of it, we are interested in politics,

but in this respect I sometimes feel that our interest should be less partisan and more patriotic. We should be less concerned with party platforms, but more concerned about fundamental principles. With politics, in its true sense as the science of government, we should be deeply concerned, not only as loyal citizens of this great Republic, but likewise from the standpoint of self-interest as lawyers.

We, as lawyers, know that throughout history the great battles for human liberty have been fought within the restricted area of the halls of justice, rather than by strength of arms on the fields hallowed by the blood of heroes. We, as lawyers, know that it is the accumulation of injustices allowed to linger and fester in the body politic that causes war. We, as lawyers, believe that there are certain underlying principles of social guidance as unerring in their effect as are fundamental laws of more accurate sciences. We, as American lawyers, believe "that government, in whatever form, is created by and exists for, the citizen, as opposed to the theory that the citizen exists for the glory and power of government."

This is a decade of vast change. The world is going through the pangs of re-birth. What may result is of extreme importance to every individual, but it is of vastly greater importance to lawyers than to any other class because they, by virtue of precept and tradition, are, as they ever have been, the guardians and trustees of all civil liberties. Lawyers cannot escape this responsibility even should they prefer to shirk it; which they would not.

In the confusion and excitement of this day we may for a time become bewildered, but we shall regain our bearings and, if given opportunity in time, set the compass of the Ship of State to bring her safely to harbor once again. We may, for a time, in certain quarters, lack popularity, but being more or less unused to it, and caring little about popular acclaim anyway, that phase shall concern us little. Dictators despise lawyers, as witness past events in Germany and Italy, where to put to death, into prison camps, or banish, all lawyers who would not serve as tools and henchmen to do their bidding was the first order of the self-appointed masters. Mass administration through commissions, boards and bureaus at the capitals of the states and nation has almost assumed the roll of dictatorship. Certainly this theory of dispensing justice *enmasse* rather than each case being determined upon its own peculiar facts and circumstances, the rule to which we are accustomed, is not in accord with our standard of right and equity. Furthermore, it is detrimental to our professional self-interest. Fewer lawyers are necessary under such mass government than under our conception of justice where every man is to be judged individually—punished for his own transgressions, but not penalized for the wrong doings of his neighbor.

Lawyers today, my brethren of the bench and bar, are under the gun and, both professionally and as free citizens who love liberty and who are sworn to uphold justice, face the greatest challenge since the days of the American Revolution. We must get under this thing that overshadows us and by united effort solve its riddle and overcome its power, that Freedom, Liberty and Justice may be retained. We must not relax or fall asleep at the switch. And to this end we must do everything within our power to present a unified and united front. It is unjust and unfair that we who belong to the Colorado Bar Association should shoulder the task rightly belonging to all Colorado lawyers. Therefore, I advocate and emphatically urge that we bend our effort to the complete unification of the Colorado Bar at the earliest date feasible.

"If a builder of a house for someone, even though he has not yet completed it, if then the walls seem toppling the builder must make the walls solid from his own means"

is a quotation over four thousand years old.

Says Mr. Rix in an article in the Journal of the American Judicature Society: "Now the termites of absolutism, of state socialism, of inflexible codes of administrative bodies, threaten to topple the walls of the structure in the countries of its origin just when the world has its greatest opportunity to accept the design."

My brethren, we are the builders of that house, never yet finished! Shall we obey the ancient law and, even at the cost of our own means "make the walls solid?"

"Our Fathers in a wondrous age
Ere yet the earth was small,
Ensured to us an heritage,
And doubted not at all
That we, the children of their heart,
Which then did beat so high,
In later time should play like part
For our posterity.

"Then, fretful, murmur not they gave
So great a charge to keep,
Nor dream that awestruck Time shall save
Their labor while we sleep.
Dear-bought and clear, a thousand year
Our fathers' title runs.
Make we likewise their sacrifice,
Defrauding not our sons."