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Address

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ADDRESS BY A. L. DOUD

Honorable Judges of All the Courts, former Judges of All the Courts, My Professional Brethren of the Bar, and Fellow Citizens:

IT is greatly to be regretted that our honored citizen, the brilliant lawyer and statesman, and one of the best loved members of our profession, the Honorable Charles S. Thomas, could not speak at this hour.

Allow me to express my great appreciation for the rare courtesy and signal honor conferred on me, in requesting me to make an address upon this occasion.

It is a rare personal pleasure to look into the faces of so many of you who have been my cordial friends in the years gone by, and whom I have held in the highest esteem, and for whom I have had the most affectionate regard.

It is also, with no small degree of pride, that I look back over the years and see so many of the men who have adorned the Bench, as you have, and recall that never, during my memory of substantially half a century, has the judicial ermine been soiled by the leprous finger of suspicion.

This little address (if such it may be called) has been prepared under peculiarly adverse circumstances. When the invitation was first presented, I had just finished one round in a contest with the universal enemy, the flu. In that first round I was reasonably successful. After the invitation there was a second round, in which I was hopelessly outclassed and I have the unpleasant memory of hearing the Referee count ten and count me out.

This tenth day of January, A. D. 1933, should be a memorable one in the history of Denver. It is the opening day of the first term of court to be held in this magnificent building. It is an epoch in the life of this city. This great municipal building has been completed; a building that, in its solidity and stability represents the character of the citizens of Denver. May I dwell upon this structure for a few moments?

In size it is a few inches more than 439 feet in length; a few inches more than 273 feet in width, and from the ground to the top of the tower there is a distance of 200 feet.

In its dimensions it is larger than the Pantheon of Rome and twice the size of the Parthenon of ancient Greece. I am advised by the architect that it is of modified Roman architectural design, although in the front there are Corinthian pillars, somewhat over 50 feet in height.

The exterior portions of the walls are made of granite. The lining of the interior portions is of Travertine; the floors of the corridors are marble and Terrazzo, and many of the rooms are covered with a soundless substance made of cork. The building, excluding architects' fees, has been constructed at a cost of \$4,704,558. I am also informed by the architect that it contains a thousand rooms; I did not make the count. Here are rooms for all the courts of the City and County of Denver, and here are offices for all the city officials.

The old Court House, as it was originally constructed and completed, was built at a cost of \$327,602, and with the additional story that was placed upon it, at a later date, the aggregate expense was \$432,602. The block of ground on which the former Court House was built cost \$18,000 in 1875. The block of ground on which this building is erected, though somewhat farther from the heart of the city, cost \$550,620.50.

Rare judgment has been exhibited in the location of this new and massive structure. It faces to the east and stands just across the street from the beautiful park, almost in the heart of Denver, known as the Civic Center. Nearby, and located on the Civic Center, stands the Public Library building, and a little to the south of that, in the same Civic Center, is located the beautiful structure known as the Greek Theatre; to the east and on the opposite side of the Civic Center is the granite Capitol building of the State of Colorado, with its spacious grounds.

Denver is buttressed on the west by these eternal hills and beautified in all other directions by the now fertile plains. From this vantage point one may look at the mighty mountains which never grow old and whose grandeur never seems less. Looking along this majestic range, we may distinctly see, to the south, at a distance of seventy-five miles, perhaps the best known of all the Colorado mountains, Pikes Peak.

Looking westward and towering above all the other peaks near it, a distance of about thirty-five miles, is Mt.

Evans, named for the illustrious early Governor, John Evans, who was appointed by Abraham Lincoln.

Sixty-five miles to the north we see Long's Peak, issuing its invitation to the world and saying, "Come and visit Estes Park, the beauty spot of all the Rockies."

It is interesting to note that in the altitude of these three great peaks, standing out like sentinels, there is a difference of only twenty-three feet.

This is a structure of which the City of Denver may well be proud. There has been criticism concerning it, it is true, but it is easier to criticise than to construct; it is easier to tear down than to build up. When the old Court House, of which I have already spoken, was constructed, the officials encountered the bitterest criticism and opposition. There was opposition to the site selected; there was opposition to every site that was suggested, and there was opposition to the building of any court house at all. When the site was finally selected, about half a mile south of the business section of the city, the newspapers sarcastically congratulated Littleton, a town ten miles away, upon having been selected as the place for the new Court House.

All honor to those who build, whether it is along material, cultural or spiritual lines!

When I inquired as to the probable length of life of this building, I was told that, notwithstanding its massive construction, its life was probably only 150 years. I cannot concur in this opinion. It seems to me that unless destroyed by some great convulsion of nature or by some unfortunate political revolution, it should stand for a thousand years. We may not chain the hand of nature, but with wisdom and justice we and those who follow after us should be able, by wise conduct and honest administration, to stay the hand of every political upheaval.

With what unstinted admiration have I witnessed, in the years gone by, the courage of this court, and the Supreme Court, in the days of threatened violence! The courage of this court and every court in Colorado has always stood the test. The calm, dispassionate action of this court, its adherence to law and order, have ever proven to be a bulwark against which the wild waves of passion and turbulence have beaten in vain. Under wise legislative enactments and sound

judicial guidance, I have the faith to believe that this building will stand for centuries yet to come.

This, however, is a changing and developing world. When the former Court House was erected, it seemed as though it would answer for a century or two, at least. Yet in less than a dozen years it was insufficient for the purpose for which it was constructed. Many of you will recall that the old Court House, when first completed, consisted of the basement, two stories, and sort of an attic. The main court room on the 16th Street side occupied all the 16th Street side of the building, and was spacious, commodious and beautiful. The court was presided over at that time by the Honorable Victor A. Elliott.

On the 15th Street side of the building were the Criminal Court and other offices. The Criminal Court was presided over at one time by the Honorable Platt Rogers and at another time by the Honorable Wilbur F. Stone.

While it is true that we must face the future with dauntless courage, I am reminded that this occasion might consist of a reminiscent hour and that we might profit by reviewing some of the scenes of earlier days and recalling some of the faces of the vanished friends.

It is approximately seventy-five years since the place whereon now stands this beautiful building was known as "The Great American Desert." Its only inhabitants were the wild beasts and wild Indian tribes, with possibly now and then a daring and adventurous trapper or Indian trader.

Sometime in 1858, or prior thereto, it was told that gold had been found in the Rocky Mountains. As the rumor spread to the eastern states, men began looking westward and the trek began across the plains. Many of these early settlers were of heroic mould, but there were others of desperate character. The earliest lawyer that came to Colorado was George Hicks, a Cherokee Indian, but he came not to engage in the practice of the law, but in search of the precious metal. The first lawyer that really came to engage in the practice of his profession was one D. C. Collier, a man said to be of worthy character and high aspirations.

At a little later date it was found also that here in Colorado could be found something better than silver or gold; that here, on these arid plains, and under these cloudless skies,

the asthmatic might find rest from threatened suffocation and that here the white plague had lost its terrors; that Colorado and the Rocky Mountain region was the Mecca for the sick, and that here, to the pallid cheek of the invalid, there could be restored once more the bloom of health.

Prior to the time when Colorado became a territory, in 1861, there was endless confusion concerning the courts. Some believed that the courts of the Territory of Kansas should control; others contended that the land had belonged to the Indians and did not belong to Kansas and that a new territory should be organized, known as Jefferson Territory.

Miners' courts were established along the lines of earlier mining courts in California and were among the first and probably the best of courts.

The first miners' court was organized in what was known as the Gregory District and was created in May, 1859. These miners' courts, organized in the mining districts, were little republics in themselves, sometimes only a mile square; sometimes they included a much larger territory. Criminal and civil codes were adopted. The miners' court consisted of a President, a Judge (known as a Probate Judge), a Recorder, a Sheriff or Constable, and a Surveyor. The miners' courts provided punishment for different offenses. Murder was punishable by hanging. Manslaughter by such punishment as a jury might direct. Threatening to kill by a fine, and the infliction of as many stripes on the bare back as a jury might direct, and this might also be followed by banishment from the district.

A person found guilty of petit larceny might be fined double the amount stolen, and given such other punishment as a jury might direct and be banished from the district. A person found guilty of grand larceny could be fined in a sum double the amount stolen and receive not less than fifteen, nor more than three hundred lashes, on his bare back, and be banished from the district, and he might also be subjected to such other punishment as a jury might direct. In one miners' court it was provided that in case of larceny the defendant might not only be banished, but in case he failed to leave immediately, he should receive not less than five nor more than twenty-nine lashes, and in case the property stolen was of a value over one hundred dollars, he might be hung.

Banishment was an important item of punishment. One can easily understand that if by some good fortune a man had discovered a rich placer ground or other valuable property, he would not like to suffer banishment.

Another peculiar provision of the miners' court was that no suit should be brought in the district for an indebtedness contracted in any other state or territory, except with the consent of all parties. It was also provided that an appeal should lie from the decision of the miners' courts to the decision of the miners, in a meeting held for that purpose.

An incident is told concerning a man named Franklin, who had been convicted of murder by the miners' court, and the decision had been reversed on appeal; he was out on bail and was required to appear at court, and did appear, from time to time, until it became a joke among the people, and when they saw him coming to the court, they would say: "Here comes Billy Franklin to be hung again."

In addition to the courts that I have mentioned, it was found that there should be in Denver a People's Court for the punishment of crime. The People's Court was somewhat similar to the Vigilantes, but it was a court called by a citizen or citizens; a judge or judges were appointed, some person was appointed to prosecute and another to represent the defendant. A jury was impaneled, the defendant tried, and if found guilty, and convicted of murder, would be hanged on the same or the following day. The equipment necessary for such punishment consisted of a team and wagon, a rope, and a cottonwood tree with an overhanging limb. It is said that on one occasion when the defendant had been convicted of murder and was about to be hanged, as he stood in the wagon with the rope around his neck, the appointed sheriff asked if there wasn't someone who could offer a prayer for the convicted wretch. Some Christian man was found; he climbed into the wagon and knelt down to pray. The defendant stood erect and the sheriff punched him in the ribs and said: "You pagan, don't you know that you should kneel in time of prayer?" The prayer was ended, the rope was fastened, the wagon was driven away, and the defendant hung.

Those were primitive times in Denver. By the latter part of 1859, constructive efforts had been made to improve

conditions and upon the organization of the territory, courts were established in ordinary form.

Then began the influx of citizens and the coming of lawyers also. I may recall at this time only the vanished faces, but what a galaxy of stars rises before me!

Elbert, Belford, the Tellers, Wolcott, Sayre, Blake, Hallett, Telford, Patterson, Markham, Decker, Miller, Symes, Stone, Butler, Hughes, Brown, Macon, Yonley, Dixon, Orhood, Steck, O'Donnell, Symes, Stalcup, Luethe, Toll, Shafroth, Rogers, Talbot, I cannot name them all! I have sought to name only those who have gone the way of all the earth but I cannot refrain from calling to mind some of the friendly faces of those who were living when I first came to Colorado and who still remain.

D. B. Graham, Robert Foote, John H. Reddin, John Denison, Gus Bartels, James H. Blood, and the stripling who came from Georgia in 1871, Charles S. Thomas.

The District Court, after the organization of the territory, was held part of the time on Larimer Street, between 15th and 16th Streets, and then later at the corner of 15th and Larimer Streets. In 1883 the District Court was moved to the Court House which we have just abandoned.

Of those lawyers of the earlier days, Judge Hallett stands forth as one of the great judges who served on the Supreme Court of this state for ten years and then for thirty years as judge of the Federal Court. Judge Hallett was austere and somewhat censorious on the bench. He was the youngest of the judges of the Supreme Court; he always stood upon his dignity, and yet Senator Thomas Bowen called him Moses, the Meek. At some time or other, Judge Hallett made some caustic comment to almost every lawyer that practiced before him. I think Willard Teller was particularly the object of Judge Hallett's critical remarks. It is said that upon one occasion while Mr. Teller was discussing a question of law upon which the court was ruling against him, he said to the judge: "What would you suggest?" Judge Hallett replied: "Mr. Teller, I would suggest that you consult a lawyer." Beneath that stern and dignified exterior of the judge, however, we found a delightful gentleman, tender and kind in every respect.

Upon one occasion a member of the bar was deprived of his right to practice law. The opinion had been pronounced by Judge Belford. As the unfortunate defendant vanished from the room, Judge Hallett interrupted to say that that was the saddest duty that he had ever been required to perform while on the bench, and in the presence of the other members of the court and all the members of the bar who were then present, he covered his face with his hands, broke down and wept like a mother weeping for the loss of her first-born.

In his court we all enjoyed his criticisms when they were addressed to the other fellow. We were like the Irishman who was asked if he didn't sometimes feel like committing suicide, and he replied that he did, but never on himself.

I recall one occasion when the judge criticised me very severely and the lawyers sitting around the court room were smiling as they enjoyed my discomfiture. Judge Hallett, observing this, finished his statement by saying, "Mr. Doud, all these other gentlemen sitting here do exactly the same thing."

The wit and wag of the bar was doubtless General Sam Brown. He probably commenced more and won less cases than any lawyer in the state. It was said of him that he would rather tell a story than get a verdict from a jury. Some of you may remember the days when the Superior Court was held in the City Hall and was presided over by Judge Merrick A. Rogers. On one occasion Judge Decker, a capable and most affable lawyer, was trying a case with General Brown upon the opposite side. When it came time for Brown to reply to Decker's argument, he told the court that Decker's judgment was not good; that his views were unsound and that he could prove it by the fact that only that morning he had seen Decker endeavoring to set his watch by a wooden sign of a clock that he saw upon the street.

Another story that is told of General Sam Brown is that on one occasion he sat down in Judge Hallett's court and by some inadvertence he sat upon a tack that was pointing upward; that he immediately jumped to his feet and exclaimed: "This court is too sharp at the wrong end."

One of the others of those early days that I have mentioned was the Honorable E. O. Wolcott; he was exceedingly timid in the early days of his practice, according to Mr.

Thomas, and did not want to appear in court, even to discuss a demurrer or take a judgment by default. He always sought to have someone else do it for him. But there came a time when his brother, Henry Wolcott, and Nathaniel P. Hill said to him that unless he would try their cases and attend to their business personally, they would take it from him. Wolcott then became District Attorney for the First District, and the time came when he must prosecute a criminal case. Even after this admonition from his brother and Mr. Hill, he went to Hugh Butler and asked him if he would not help him to try that case. Mr. Butler refused and took Wolcott to task for his timidity and it became necessary for Wolcott to try the case alone. He said afterwards that he had no conception of what he said to the jury; that he seemed to be suspended between heaven and earth and all that he could remember was that he was uttering some audible sounds. Later, he was astonished beyond measure to learn that the jury had convicted the defendant. From that time, confidence came to the young lawyer and he became, not only one of the great orators of Colorado, but also an orator of national renown.

It was generally believed that Patterson was winning cases that sometimes he should have lost, and that the wand of the orator was one of his efficient weapons. Many times have I been told by the men who sat upon the jury in cases where Patterson was counsel, that in that particular case, in which those jurors sat, Patterson was always right.

Judge Samuel Belford was also one of the first three of the judges of the Supreme Court and he was known and remembered as a judge of great ability. His daughter, Frances Wayne, is now one of the gifted writers on the Denver Post.

Judge E. T. Wells was the other of the first three judges of the Supreme Court of this state. On the bench he was a martinet, but a great judge. Off the bench, he was delightfully companionable. What strange quirks we sometimes have! Often has Judge Wells told me that it was his ambition to own the finest horses in the land and house them in a stable where the stalls were made of marble and the trimmings made of gold.

One of the quaint characters of those early days was George W. Miller, tall, lean, lanky, and angular—he became judge of the County Court and before him some of you must

have had the fortune or misfortune, as the case may have been, to represent a client. You will recall him as the great compromiser. If the plaintiff should sue for \$110.50 and the matter was disputed, Judge Miller would say: "This seems to be a case where the equities are about evenly divided and the judgment will be rendered for the plaintiff in the amount of \$55.25."

However, there came a time when the judge was desperately puzzled. John DeWeese brought a replevin suit before him for a horse. DeWeese insisted to the court that this was not a case that could be compromised; he didn't want the front half of the horse nor the rear half, he wanted the whole horse, or none. My information is that he got none.

Judge Amos Steck was also on the bench for a while, and a person going to his office, on one occasion, after he had retired from the bench, heard him most vigorously exclaiming: "The Supreme Court will reverse it; the Supreme Court will reverse it; the decision is iniquitous; it is damnably iniquitous."

The listener finally said to him: "Judge, whose decision is that you are talking about?"

He said: "It's my own; it's my own."

It is reported of another judge, by that inimitable storyteller, Will Dayton, that he stepped into the court room one day and heard a judge, then on the bench, who had been hearing a Chancery case concerning the inadequacy of a purchase price at a sale, and that the court submitted to the jury the question whether the inadequacy of the price was sufficient to shock the conscience of the Chancellor.

I am now reminded that life is short and time is fleeting.

The judges of this day upon the District Bench of this city and county are:

Charles C. Sackmann, Frank McDonough, Sr., George F. Dunklee, Henley A. Calvert, J. C. Starkweather, E. V. Holland, Robert W. Steele.

May I just call to mind some of the judges of the other days?

Victor A. Elliott, Platt Rogers, George W. Allen, C. P. Butler, D. V. Burns, O. B. Liddell, David B. Graham, W. S. Decker, Frank T. Johnson, Amos J. Rising, John A. Perry, Carlton M. Bliss.

May I pause here for a moment? You will remember what an urbane and winsome fellow was Judge Bliss. Let me tell this story on myself.

I was trying a case before him and I had called to the witness stand one who had come from the same place from which I came. For some vain reason, I now think, I asked that witness if he came from the same town that I did. Objection was made, on the ground that it was immaterial. Judge Bliss said he didn't know about its being immaterial, but it seemed to him that the witness might properly assert his constitutional privilege and not incriminate himself.

Other of the District judges were: John I. Mullins, J. A. Bentley, W. D. Wright, W. A. Haggott, Harry C. Riddle, Hubert L. Shattuck, Charles C. Butler, Julian H. Moore, Greeley W. Whitford, John H. Denison, James H. Teller, and Owen E. LeFevre.

Perhaps I have omitted some. I have been unable to come to the office and procure any records whatsoever for this address.

Then I think of the judges of the County Court. Maybe I cannot recall all of them, but there were: Amos Steck, B. F. Harrington, George W. Miller, Owen E. LeFevre, Robert W. Steele, Grant Hudson, Ben Lindsey, Judge Dixon, Ira C. Rothgerber, and the present incumbent, George A. Luxford.

I should like to tell an incident concerning Judge Whitford, whom I see sitting yonder. Many years ago the judge was prosecutor in the Federal Court; I had a case in that court, in which I represented the defendant. While we were impaneling the jury, Judge Whitford came to me and said, pointing to a man in the jury box, "Doud, that man is a friend of mine; I'm just telling you in advance." I thought I could be as honorable to the judge as he had been to me and I concluded to keep that juror. I lost my case. It was that particular juror that caused me to lose it.

A few days ago Judge Starkweather called my attention to the fact that in 1883 there were in this city 238 lawyers, of whom only 10 are living at this time.

"They are passing away, these friends of old,
Like a leaf on the current cast,
With never a break in the rapid flow
As we watch them, one by one, as they go
Into the dreamland of the past."

I have stated something of the merits of the judges who adorn the present bench and those who have adorned it heretofore. However, I have never conceded for an instant that they were all *perfect*. I think I could prove that now and then, they make a mistake, if I could take a vote of those who sit in front of me, instead of behind me. However, I am reminded of the story that one of the judges of the Supreme Court told me. I should not like to name him personally, because then you would recognize him, but when he was a member of Congress I visited him and he said to me one day:

"Doud, when I first came to Congress I wondered how in the world I got here, but after I'd been here a couple of weeks I wondered how in the world the rest of them got here."

We are apt to magnify the past and overlook the present. I believe that this day is better than any day of the past; that the present bench is equal to that of any preceding date and the present bar is not excelled by those of former times.

My childhood days were spent upon the wide and sweeping prairies of Illinois, where neighbors were scarce and playmates were few. One, however, was a cousin of mine, who visited me occasionally, and in the afternoon when the sun was sinking towards the west and it was time for him to return to his prairie home, I would invariably ask my mother if I could go a piece with him. My mother always acquiesced and the visit was finished as I went the piece with him.

May I assure you, members of the bench and members of the bar, that at this late date when necessarily I am nearing the end of the long, long trail, there comes to me the memory of the days that I spent in forensic contests before this court, and other courts, with these members of the bar, and as tender as the mountain zephyrs are at the summer eventide, as refreshing as a shower in May, and as fragrant as the odor of the wild roses that grew in my native state, is the memory of the days that I have been permitted to walk a piece with you.

Judge Wilbur M. Alter and Ernest B. Upton have formed a law partnership under the firm name of Alter and Upton.