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By PAUL V. MCNUTT

Mr. President, Ladies and Gentlemen:—

Recalling the admonition of the president not to be academic, I wish to speak to you briefly on "The Triumvirate of the Profession of the Law".

A few months ago I heard Learned Hand, Judge of the United States Circuit Court of Appeals, Second Circuit, say that "The teaching of lawyers is indeed as distinct a vocation from the practice of law as law is from engineering or science".

The acceptance of this as a fact is evidenced by the number of law teachers who are devoting themselves exclusively to their calling. This change was necessary and advantageout. It was necessary because the busy lawyer had no time for students and the teacher, if he performed his duty, had no time for clients. It was advantageous in that it developed the science of teaching law and pointed the way toward a systematic, scholarly understanding of the law.

But the evolution of law teaching as a distinct vocation does not mean that the teacher is divorced from the bench and bar. Practically all law teachers have practised law and many of them have held judicial positions. By entering academic circles —which, though poverty stricken, are not as cloistered as you might think—they have chosen a different function in the solution of the same problems they faced as practitioners. They labor in the same vineyard. They are still members of the public profession of the law and share its responsibilities.

It is for this reason that I have chosen to refer to the practitioner, judge and law teacher as the triumvirate, using that term in the sense of a coalition or association of three in office or authority. I might have used the term as meaning the modern counterpart of the First Triumvirate, Pompey, Julius Caesar and Crassus, but I was unable to find a group in the legal profession to fit the role of Crassus, whose place in the First Triumvirate was secured by his great wealth. It is my purpose to emphasize the fact that the legal triumvirate, a coalition of three in authority, is charged with the most important responsibility in politically organized society, which is the efficient administration of justice. The successful discharge of this responsibility involves and demands the highest degree of co-operation and intelligent effort.

The authority of this group is challenged by certain lay agencies. On the face of the matter such a situation is neither unusual nor alarming. The lay attitude towards the lawyer is traditional. There is a bit of mediaeval verse which illustrates the tradition:

"Sanctus Ivo erat Brito
Advocatus sed non latro
Res miranda populo",

which is translated thus—Saint Ivo was a Brittainy lawyer but not a robber—a wonder to the people!

It was this same Saint Ivo, so the ancient story goes, who, on petition by the lawyers, was permitted by the Pope to choose the patron saint of the lawyers. The choice was to be exercised in this fashion. Ivo was to be blindfolded and turned loose in

the Lateran to feel the statues of the saints. He was to embrace one statue and the saint whose statue was thus selected was to be the patron saint of the lawyers. Ivo wandered about, lawyer-like, feeling of various statues, until he came to the one of Saint Michael overcoming Satan. Then, as fate would have it, he threw his arms about the statue of Satan, who according to the clergy, thus became our patron saint.

This traditional attitude dates back to the twelfth century disputes between law and theology, disputes which have arisen from time to time since and just lately have shown signs of revival. The clergy did not relish the thought of handing over the practice of the law and the places of authority to non-clerical lawyers and, in jealous rage, poured maledictions upon the heads of our unfortunate brethern to the evident joy of a credulous populace.

The same opposition flared up at the time of the Reformation, when Catholic and Protestant joined hands, figuratively speaking against the legal profession. This opposition was carried to the new continent by our Puritan forefathers and the clergy reigned supreme in Colonial America.

It is significant that the rise of the legal profession and the beginning of our national existence were coincident. This is a sesquicentennial in a double sense for American lawyers. But the closing of a calendar period is not so much an occasion for celebration as for casting accounts. Members of the legal profession have enjoyed a century and a half of leadership, marked by many outstanding accomplishments. Is this position of leadership secure or is it to be snatched from us by the members of other professions who would sit in high places?

The extreme hostility of the clergy did not disappear until after the Civil War, when it gave way to the pressure of economic conditions. We had come to think of the separation of the church and state as complete until certain happenings in Tennessee clearly indicated that the ties that bind had not been served. Evolution and prohibition have renewed many of the age-old controversies over law and morals and have awakened desires for temporal leadership in many members of the clergy. We may expect some revamped diatribes of Luther from various pulpits. May we have the grace to accept them in a spirit of Christian charity and to go about our business unruffled and undisturbed, ever remembering that it is possible to be (as Ivo was) both saint and lawyer!

Other learned professions are making demands for leadership. The doctor, the engineer, the scientist and the journalist strive for a place in the sun and, naturally enough, do not hesitate to revive lay tradition in order to remove the lawyer from

his place of authority. Within a comparatively short time the medical profession developed powerful and comprehensive state and national organizations, reorganized, raised and fixed the standards of medical education and admission to practice, made possible the publication of a first rate technical journal, and sponsored and secured adequate support for extensive research. All this was done in the interest of public health. The mortality tables reflect amazingly beneficial results. If the legal profession is to maintain and justify its place of leadership it must do the same thing for public security.

The engineer and the scientist point to remarkable accomplishments during the present generation as a basis for their claims. The journalist feels himself to be the voice of the public and thus the dominant figure in a democracy. Occasionally he has gone so far as to invade the legal field by what has been called "Trial by Newspaper" and by repeated attacks on the legal profession for alleged failures in the administration of justice.

The challenge by other professions, the repetitions of the slings and arrows of lay tradition and other manifestations of professional jealousy are not matters of grave concern so long as the practice of the law remains a profession as distinguished from a trade or business. Jessup defines a profession as being "a calling in life based on special training and ability contemplating public service, and differentiated from ordinary business vocation by its subordination of pecuniary returns to efficient service". The emphasis is on service. For the lawyer this means service in the proper administration of justice. Compared with other professions the lawyer's position in a complex society such as ours is secure because of the inexorable working of certain social and economic forces, which require the operation of legal science in the interest of public security.

The serious threat against the authority of the legal profession comes from a Frankenstein of our own creating, the ordinary reasonable man, who now appears in the guise of the ordinary business man or worker. He is hailed as the great apostle of common sense, the application of which is suposed to cure all ills of the body politic. He has been taught by the demagogue, by the editor and by the school teacher that his will, if, as and when expressed by the legislature, is law. (It is law, when and as interpreted by the courts in the light of reason and juristic science.) His opinion is public opinion. He is the public and it is for him that we have administration of justice. After all he is the judge of its efficiency because he accepts the remedy or the penalty and pays the bill.

In this connection I invite your attention to the preamble of the Canons of Ethics of the American Bar Association. In

America, where the stability of courts and of all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of the republic, to a great extent, depends upon our maintenance of justice pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men".

I speak with careful sincerity when I say that legal profession does not receive the approval of the ordinary man. He is not satisfied with present day administration of justice and does not hesitate to say so. Many of our profession have received his mutterings in complacent silence or have lectured him on "respect for law" or on "the Constitution".

The ordinary man, who is not a criminal, has respect for law, using that term in the sense of justice or the legal order. He loves it. It is his life. But he is disgusted with "sacred" rules and principles which are antiquated and do not secure the justice which he desires. He respects the work rather than the content of legal rules and principles. He respects the constitution when it proves to be the guarantee of life, liberty and property, and when it actually promotes the general welfare.

He knows what a man like Henry Brougham means when he uses these words in the House of Commons: "It was the boast of Augustus that he found Rome of brick and left it of marble. How much nobler will be the sovereign's boast when he shall have to say that he found law dear and left it cheap; found it a sealed book and left it a living letter; found it the patrimony of the rich, left it the inheritance of the poor ;found it a two-edged sword of craft and oppression, left it the staff of honesty and the shield of innocence!" That speech, delivered in 1828, resulted in the appointment of the Royal Commission, whose reports brought about the Common Law Procedure Acts and the Judicature Acts. Both of these acts improved the functioning of law.

The ordinary man looks to the legal profession to secure a workable system of justice for him. When the profession fails to do this, he rises in his might to apply his so called common sense and tinker with the machinery.

I was forcibly reminded of this a few days ago when, at the conclusion of a county bar association dinner, the conversation turned to a discussion of administrative boards and commissions. One of the lawyers present remarked that he had about given up the practice of the law and was spending his time at the

State House making the rounds of boards and commissions. Then the tirade began. I had the temerity to suggest that the most of these boards and commissions were the result of lay efforts to meet needs unsatisfied by our administration of justice but this did not stem the attack. That conversation and a subsequent investigation revealed some startling facts. There are at least eighty six agencies of administration in our state (as distinguished from municipal government. Nine of these are elected by the people. Five are non-governmental in character. Sixty seven are distinct administrative agencies in board form or governed by boards. Seven are distinct administrative agencies with a single individual head. Only three are traditional legal agencies: the Supreme Court, the Appellate Court and the Attorney General. Sixteen others perform legal or quasi-legal functions. (I abhor the word quasi. It is what E. H. Warren calls a weak-minded word. It is best illustrated by the story of the landlady who advertised a "room with a quasi-private bath", which meant that it was not private at all.)

I risk boring you with these statistics to bring our four points: First, that the actual administration of justice has been passing from the courts to administrative boards and commissions; second, that this is a lay threat against legal authority; third, that the legal profession must formulate in legal principles the results of administrative experience in order to prevent our government from becoming a government of men and not of laws; and fourth, that the legal profession must make a critical examination of judicial organization and administration with a view to adapting them to the changing needs of society.

We hear much complaint of the number of laws on the statute books, of what some have facetiously call the "rain" of law. The 1926 Burns Revised Statutes contain 14,611 sections. Last week Congress looked upon its handiwork in the form of 1700 double column pages of federal statutes. The ordinary man blames the legal profession for this overwhelming mass of statute law on the theory that our legislative bodies are and have been filled with lawyers. The fact is that the relative number of lawyers in legislative bodies is becoming smaller. This is another lay gesture against the authority of lawyers. Furthermore laymen are the ones who are loading the statute books. Every trade, business, farm and labor organization and every organization which has no business has some legislative project and sooner or later obtains its adoption. Through the pressure of certain of these organizations we have seen legislation become the handmaiden of intolerance and bigotry, which have absolutely no place in a nation "conceived in liberty and dedicated to the proposition that all men are created free and equal."

The suggestions of laymen for getting rid of unfortunate legislation of lay origin would be amusing if they were not fraught with tragic consequences. For example, a distinguished layman, Arthur Twining Hadley, President Emeritus of Yale University, in his recent article on "Law Making and Law Enforcement" points out the great dangers which now confront us in the increasing demand for ill considered legislation and the increasing readiness of would-be reformers to rely on authority rather than on public sentiment for securing their ends. He asks this question "what can we do to protect ourselves against this spirit of overregulation which seeks to place under official control not only the organization of industry and commerce but the conduct and even the thought of the people themselves?" He answers this by saying that "If any considerable number of citizens, who are habitually law abiding, think that some statute is bad enough in itself or dangerous enough in its indirect efforts to make it worth while to block its enforcement, they can do so." He says that "this process of blocking law by disobedience is known as nullification" and he gives as illustrations the nullification of the Fugitive Slave Law by the people of the North. the nullification of the Reconstruction Acts by the people of the South, and the nullification of a large number of laws for the taxation of personal property by the people of today. (I suppose President Hadley knows that the actors in his last example are also guilty of perjury.) He goes on to say that "the people must choose between the danger of lawlessness which results from ignoring a statute and the danger of tyranny which is involved in passive obedience". Perhaps President Hadley feels that we should have a government of "best minds" instead of a government of laws. In practice every lawbreaker would feel that he belonged to the group of "best minds" and that he was performing a public service.

Legislation is necessary and becomes more important as our social and business life becomes more complex. It is essential that the law keep place with the demands of present day civilization. The shift from rural to urban life, the automobile, the radio, the aeroplane and modern business present problems which cannot wait upon the necessarily slow development of the common law for solution. The situation calls for the best the legal profession has to offer. It calls for united effort in choking off useless, befogging legislation. It calls for careful study and preparation for law making. It calls for a close inspection of the economic, political and legal aspects of legislation, in the light of the experience of the past and of the results desired.

It is equally important that we give due regard to the enforcement of a particular statute. Executive efficiency, custom or intrinsic worth may not be enough. It may be necessary to devise new methods and means of enforcement. The best legislation is worse than useless if it cannot be enforced.

The most vigorous challenge of present day administration of justice has to do with criminal law and procedure. Civic and professional organizations, newspapers and magazines, ministers and lecturers, three out of five of the individuals on the street seems to regard the securing of more efficient justice as the most important public question. The committee of the American Bar Association, appointed three years ago to investigate and report as to conditions affecting law enforcement, considered the data collected and made the brutally frank statement that we are the most lawless civilized people in the world.

There is no need to call upon the legal profession to bestir itself in response. It is doing that. Witness the activities of the American Bar Association, of various state and local bar associations, of the Association of American Law Schools, of the Institute of Criminal Law and Criminology and of the American Law Institute. What has come of this feverish activity? Hon. Herbert S. Hadley, chairman of the special committee of the American Law Institute, told me last week that his investigation had disclosed three facts: first, that the profession generally is uninformed on matters relating to criminal law; second, that among those who were infromed there was no agreement as to the defects in the ystem; and third, that there was a lack of concensus of opnion as to the necessary work of reform. Some of the defects listed were abuse of the pardoning power and parole system, archaic and uncertain provisions of our criminal procedure, uncertainty and indefiniteness of our substantive criminal law, deficiencies in proceedings before examining magistrates, faults of police and court officials, unethical practices of defense lawyers, inadequate number and inefficient organization of courts, inability to secure the presence of witnesses, poor juries, the law's delay. Some of our brethern turned on the laymen, saying that public indifference to the enforcement of the law and flabby public opinion which tolerates lawlessness were the principal causes of the defective administration of justice.

The work of the legal profession in reforming criminal justice is hampered by the failure to give criminal law and procedure the careful study and treatment accorded different parts of the civil law and by the refusal of an increasing number of practitioners to accept criminal practice.

The legal profession must not and cannot avoid its responsibility for criminal justice. We have had enough lay tinkering

with criminal procedure to demonstrate the layman's inability to solve the problem. The problem can be solved and it is the lawyer's business to solve it after he has assembled the materials through thorough and painstaking research.

One other complaint the ordinary man makes of the administration of justice is expressed by this embarrassing question: why must he break a contract to find out what it means and why must he violate a statute to test its validity? It is no asnwer to whisper something about the possibility of a declaratory judgment. Some day he may find that civil law jurisdictions have a system of preventive justice. It would be wise to satisfy his crying need in this regard before he makes the request or devises a system for himself. Furthermore, an intelligent effort to obtain reasonable and just solutions of individual cases will humanize the administration of justice and make possible a more perfect achievement of the purposes of law.

Administrative tribunals, judicial organization and administration, legislation, enforcement, criminal justice, preventive justice and the individualization of the application of justice are some of the pressing problems of the legal triumvirate. They are more vital and far reaching in importance than the problems which faced the First Triumvirate of Rome. Upon their solution depends public safety. Upon their satisfactory solution by the legal profession depends the continuance of the legal triumvirate in office and authority. Unless the legal triumvirate is able to satisfy the ordinary man's demand for efficient, living justice it will be swept from power as were the triumvirates of Rome, as were our brethern in other days. One hundred fifty years of leadership is no guarantee of perpetual authority. A leadership which does not justify itself cannot long endure. Client caretaking is only one phase of a lawyer's duty. Public service of a high order is the distinguishing mark of the profession as long as it deserves that classification.

It would be well for us to cast aside professional jealousy and follow the example of the medical profession in certain activities which have brought it strength. One is the development of powerful and comprehensive national and state organizations. The American Bar Association has less than twenty per cent of the mebers of the profession on its rolls. Despite the remarkable and gratifying increase in membership this year, the Indiana State Bar Association includes less than fifty percent of the lawyers in this state. There is strength in numbers but there is greater strength in a public manfesttation of unity of purpose.

Another necessary activity is to support and develop law schools of high grade. Conditions have forced the shift from

the apprentice type of legal education to the law school type. The transition is practically complete. The practitioner was entirely responsible for the first type and during the period of change retained control of legal education. When the law school type of legal education became firmly established the law teacher assummed control and the practitioner began to lose interest because he no longer felt the weight of responsibility. But the responsibilities of the profession as a whole remain. They are joint rather than several. The law student of today is the lawyer and judge of tomorrow. His training is of fundamental importance and through him all of us contribute to the strength of the profesSon. I am profoundly interested in creating the strongest possible ties between the law school and the bench and bar and I invite your hearty cooperation and support.

The law school of today is something more than a trade school. Training competent lawyers is its primary and most important task but it must also provide a place for productive legal scholarship and research. Law is a science and, like any other science, must have those who work in the field of pure science as well as those who work in the field of applied science. Pure science furnishes the materials for applied science and thus makes contributions of the greatest practical importance.

We must look to the law school for creative work in legal scholarship. The courts, with overflowing calendars, have no time for writing. The able practitioner cannot lay aside his clients' interests. The hackwriter is intent on quantity rather than quality production. Most of the work in the pure science of the law must be done in the law schools, where there is a guarantee of training and scientific attitude. But in all these matters the participation of the members of the active profession is necessary. Theirs is the important task of making productive legal scholarship possible through adequate support and of directing the work of research as well as making the practical application of the findings. The most important developments in modern medicine are the results of just such activities on the part of the members of that profession.

The third activity is to raise and fix the standards of admission to practice. This is essential for the protection of the general public in the urban society of today. This association has much to its credit in this regard and the recommendation of its legislative committee is a pledge of unrelenting efforts in the future.

I am confident that the legal triumvirate is equal to the problems and tasks which confront it. I solemnly pledge the entire resources of your state law school to the successful discharge of our joint responsibilities. Nothing is more important than

the efficient administration of justice. It is the foundation on which civilized society rests.