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## IMPACT OF WORLD CONDITIONS ON THE LEGAL PROFESSION

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(An address delivered at the 54th annual convention of the Colorado Bar Association, October 11, 1952.)

In considering present trends and conditions of the legal profession in the United States, a brief glance into modern history prior to World War II and subsequent to the Japanese surrender will disclose a few of the basic issues. Prior to the beginning of World War II there were four major legal systems: (a) *Anglo-American*, with its underlying common law principles. This system of law was the basic concept for the judiciary and legal profession in England and her dominions and in the United States and her territories. The American Revolution had no particular effect upon the underlying legal system. We retained the principle of an independent judiciary following our independence from England. The principles of common law were accepted unless constitutional or statutory changes were made.

(b) *Continental*, with a basic change produced under Code Napoleon following the Napoleonic Wars. The Continental legal reforms of the later 18th century had general application in Western European countries. However, legal systems of Continental Europe were largely directed through a Ministry of Justice which had political control.

(c) *Soviet Legal System*, following the seizure of power by the Bolsheviks after the Russian Revolution which resulted in subordination of individual rights to state control and elimination of private ownership of productive property. The Soviet system of justice was and is designed as an "agency of the State to assist the Government and party in power to achieve the aims of the Party and State." The whole concept of Soviet justice is to protect the State and subordinate the right of the individual.

(d) *The Japanese Meiji Legal System* which purported to abolish the legal traditions of feudal Japan and following a legal system patterned largely after the Prussian system of law. Again under the Meiji Restoration the judicial system was subordinated to political power vested in a Ministry of Justice.

What are the changes since World War II? Let us take a brief look at the four principal legal systems as affected by World War II: (a) *Anglo-American* is still basically the same. England still maintains her independent judiciary, regardless of political changes. Likewise, the basic system of law remains in the principal states that have become independent since World War II. The United States has an independent system and the Philippines and Puerto Rico have legal systems following the general United States system of law.

(b) The *Continental System* has undergone radical changes. There is a definite trend to eliminate political control of the judicial systems. West Germany is a notable example, having adopted in principle our independent legal system.

(c) The *Soviet Judicial System* is basically the same except the rights of the individual have been drastically curtailed. Prior to World War I this system only affected 200 million people. Now it extends to one-third the inhabitants of the world.

(d) The Japanese have abolished the whole Meiji concept of a dependent judiciary and legal profession and substituted a new constitution patterned after the United States with a judicial section embracing the most modern reforms, including the best principles of the New Jersey, Missouri and California judicial systems.

What are the results? Two dominant legal systems remain—the *Anglo-American* and the *Soviet*. While many of the countries in other parts of the world cling to their old ideas of a dependent legal system, the trend is definitely toward an independent legal system with the basic concepts of the *Anglo-American* system of jurisprudence. Certainly the prevailing legal systems of the world are only two—the *Anglo-American* and the *Soviet*.

As lawyers how do we define the differences between the two systems? In the Soviet it is admitted by all current Soviet writers, including Foreign Minister Vishinsky, that "law is a tool of the State." The practice of law has likewise been regulated by the State until now the lawyer is not free to represent his client and urge any defense that he deems wise under the facts and the law. In the trial of criminal cases the Soviet defense lawyer has the same fear of complicity in the crime of his client as the defendant himself. His legal education, hours of practice and fees are all subject to regulation by the State. The judges no longer have judicial freedom. The favorite People's Court of the Soviet judicial system often contains more laymen than regularly trained judges. They dare not render a decision that would not have the approval of the Politburo and its politicians.

In the cold and hot war that is being waged throughout the world one of the basic issues is which system of justice will survive.

At this point I believe it would be helpful to review the present world conditions, based upon my recent personal observations.

The world is in ferment. Unrest, even fear, exists almost everywhere. Hot wars are being fought in Korea, Indo-China, Malaya, Indonesia and the Philippines, with sporadic riots in Iran, Egypt, India and elsewhere. While many of these wars, riots and incidents are far apart geographically, there is a common theme or objective. Earmarks of the master strategy of the Kremlin may be found in all. The major danger spots in the cold war area are:

The divided cities of Berlin and Jerusalem;

Iran and the Middle East and the borders of India and Hong Kong. While the danger in many states is due to Nationalism,

Communism plays an important part. Joe Stalin and his cohorts in the Kremlin watch every move and capitalize upon every favorable turn of events. When a vacuum is created, the Communists move in; often they help create the vacuum. That is exactly what happened in Bulgaria, Roumania, Hungary, Poland, Albania, China and Korea. Today Iran is hanging in the balance.

Time will not permit a discussion of all and I shall only comment upon three areas: Berlin, Jerusalem and Korea.

First, BERLIN. This city of over three million Germans is divided into four sectors with, generally speaking, the Soviets in the East and the British, French and Americans in the Western areas. The entire city is surrounded by the Soviet Zone. Berlin is an island state completely encircled by a sea of Communism. All of us are familiar with the constant border clashes, killings and traffic stoppage. Today West Germany is a booming nation with practically no unemployment, yet West Berlin has more than 300,000 unemployed. Why? Business firms do not send orders to Berlin industries as they do to West Germany because of the fear of a blockade and questionable delivery. While I was there in late July, the Soviets abolished all the East German States and substituted Soviet Administrative Districts with their own system of laws by decrees. I had the opportunity to talk with numbers of judges and lawyers who escaped from the Eastern Zone, leaving their homes and property behind in order to be free again. More than 1700 lawyers and judges had fled to safety in the Western Zone during the past four years. A notable example of the border incidents was the brutal and illegal kidnapping of Dr. Walter Linse, an eminent lawyer in West Berlin. His fate is still unknown. His brave and cultured wife came before the meeting I attended with shocking facts. I have a copy of the alleged confession of his stenographer who betrayed him, which was published in the East Berlin Soviet newspaper while our conference was in progress. As prominent judges and lawyers from 42 free nations of the world condemned this brutal kidnapping and the system of injustice behind the Iron Curtain, the Soviet radio constantly referred to our meeting as "the legal gangsters". They were amazed at the action of the lawyers of the free world in condemning their acts. This incident is only one among many. Courageous Mayor Reuter of Berlin is a great leader and he assured us that he and the people of West Berlin will stand together as a unit against the Soviet regime of slavery and tyranny.

Second, JERUSALEM. The Holy City today is seething with hatred and fear. Armed men behind barbed wire try to maintain the truce line that runs along Holy ground. Much of the old City has been destroyed. Approximately 800,000 Palestinian Arab refugees merely exist in tents, caves and old buildings in Syria, Jordan and Lebanon. All are ready to give their lives if necessary to regain their homes and property. The peoples of the Arab world have no love for the United States, since they believe we are responsible for much of the chaos and misery.

Third, KOREA. The war there is grim, hot and costly in United States lives and money. The ground battle line meanders along peaks and valleys for 110 miles. We are no longer fighting the North Koreans (only a small number oppose us). Our real enemies are the Communists—Chinese and Russian. Our brave young Americans every day are being shot down by Soviet-made airplanes and anti-aircraft artillery. It is very strange to view actual combat films, as I did just a few weeks ago, and see three big Communist air bases just across the Yalu River. All our airmen can do is to look. Our boys even watch the enemy planes take off against them but can do nothing until they gain altitude and cross the river, with the advantage of altitude and position.

The Communists are dug deep into the high, rocky mountains. They are protected by caves, solid rock bunkers and overhead shell-proof reinforcements. I hesitate to think of the toll of lives necessary to break that line.

The truce talks are a farce. Our representative, General Harrison, pitches horseshoes to pass away the time. While these talks have lingered on for one and one-third years the United Nations Forces have suffered approximately 10,000 casualties while the Communists have brought in 400,000 additional reserve soldiers and substantial supplies. We will never obtain an honorable truce unless we win a definite and substantial military victory.

While I have given you the dark side of the picture, let's take a glance at the bright side. It is a paradox that our two defeated enemies, West Germany and Japan, are recovering more rapidly than other nations. They are working, business is good, and no starvation exists. Moreover, they are following our form of constitutional democratic government with an independent judiciary and legal profession. We need them and they need us in the struggle with Communism.

Turkey is another oasis in the world desert of uncertainty. The Turks are working hard. No doubt exists as to their loyalty to the Western powers. They have a good army and are tough fighters. Turkey is a great anchor for freedom at the outpost of the free world.

Greece is another strong ally. Her people have faced the bloody side of Communism with bravery and patriotism. However, inflation is rampant.

The little country of Thailand is a land where people have plenty to eat, export rice, and cooperate with the United States.

The United States is unquestionably the leader of the free world. Statesmen and just plain citizens everywhere recognize this situation. Recent events have created colossal problems of leadership at home and abroad. We are in the front line of the death struggle in the cold and hot war with Communism. The issues are plain: the forces of liberty and freedom are arrayed against those of tyranny and oppression.

Grave dangers are on the horizon. President Truman, Gen-

eral Eisenhower and Governor Stevenson have each in recent weeks emphasized that "we are in the greatest peril of our history." We need clear thinking, hard work and unfaltering patriotism. Are we forever to live in two worlds, hostile and hopeless, under a pall of fear? We cannot retreat further. We should assume the initiative and not the defensive. By this I do not mean we should start a preventive war or drop the atom bomb now, but I do advocate these measures:

1. Create a global strategy and a definite nonpartisan foreign policy. Non-office holding leading citizens should have an important part in formulating such a policy.

2. We can not feed and rebuild the entire world and remain strong ourselves. We should concentrate upon a few strategic spots after a definite policy is established.

3. We can prevent the success through military force of the Soviet plan of world domination. This means a policy of alertness and strength. It means, too, the willingness to meet any challenge on the field of battle at any time.

4. Stop the useless truce talks in Korea and take the necessary steps to bring about a definite military victory so that the Communists would be seeking an armistice from us on satisfactory terms.

5. We can ultimately defeat this ancient idea of dictator rule by championing the supremacy of law throughout the free world. Where law is supreme, tyranny can never be. We must exert our influence to maintain the supremacy of law in all non Soviet regions.

6. We can apply the pressure of ideas upon the Soviet world. They may build a wall to the skies but the light of knowledge can not be kept entirely out. In this struggle of ideas we have an enormous advantage, we do not fear the propaganda of the Soviets—they fear our truth. We do not seek to prevent contact between our people and theirs; they are the ones who oppose the restrictions—we do not disturb their radio broadcasts; they try to jam ours. Theirs is a police state—ours a free state.

We cannot divorce problems in the legal profession from those of general world conditions, because one is affected by the other. Courageous and bold leadership is the crying demand of the hour in political and legal circles. Fear should be banished. I have an abiding faith in our legal profession to arise to the challenge of the hour but we cannot "muddle through." It takes courage, faith and hard work. What are some specific objectives that the legal profession can achieve in this world crisis? The following appear to me as within our capabilities:

1. We must continue to improve the procedure under our judicial system to terminate litigation, both civil and criminal, more speedily and effectively. Certainly, we have made progress in many states and localities but there are still many places where justice is delayed and the chances for immediate trial are remote. I believe that one of the most effective reforms necessary along this line is for lawyers and judges throughout the United States to encourage

and establish the American Bar Association plan for selection of judges. The pre-war philosophy of leaving the selection of our judges—especially appellate judges—for decision by the voters is cumbersome, political and not conducive to the prompt and effective administration of justice. Our judges cannot be absolutely independent in thought and action as long as they must depend upon election by direct vote of the people at large. To say the least, it encourages judges to be politicians. Moreover, judges and friends of judges should not be subjected to the terrific expense involved in state and district political campaigns. Under the American Bar plan the best points of the appointive system are preserved at the same time leaving to the voters the right and privilege of disapproving the record of any judge.

2. We need a complete overhaul of our traffic courts. More than twenty million people appear before traffic courts each year. The general opinion of the administration of justice is formed by those defendants. Moreover, these are not the usual professional criminals, but first and second offenders and, in many instances, your son or daughter and mine. The fee system should be abolished in all courts, including the traffic courts.

3. With the worldwide conflict between the free and Soviet worlds and with the system of justice at issue, we must improve our legal system. As we are the acknowledged leaders of the world, those in other lands who are wavering between joining with the free world and the Soviet world are keenly observing our institutions, including the judicial system. We need bold collective and individual leadership in our legal system. We need more individual leaders of the caliber and stature of Chief Justice Arthur T. Vanderbilt and Judge Harold R. Medina. Also, we need more dynamic bar associations with courage to fight for the principles of an independent judiciary and legal profession. The Bar Association of the City of New York, in cooperation with the Federal Judiciary Committee of the American Bar Association, is a fine example. The lawyers of that city had the courage to oppose the nomination of the President for a United States judge to occupy the bench to which Judge Medina was appointed. Through the leadership of that Association, the President's nominee was not confirmed and the Bar Association exercised its prerogative of leadership, affirmatively recommending Judge Harold R. Medina, and you and I are familiar with the results.

4. The people of the United States and the world are looking to the lawyers of the United States to lead the fight for the improvement of an independent legal profession—not only relating to the maintenance of an independent judiciary—but as leaders in great issues that confront the United States and the world. The people of our land, from the smallest county to the largest metropolis, are yearning for leadership. No class of our people are more qualified by education and experience than the lawyers to mold the thought and to direct the policies of our citizens along the path of maintaining and improving our legal system.