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Equal Justice under Law

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tion they proved satisfactory to three lawyers out of every four.

What do the remaining features of the plan contemplate? First, an integrated court with the chief justice selected for his ability as an administrator to act as a true president of the court. Second, the assurance that so far as possible judges shall be qualified lawyers who know the rules of their business, shall stick to their jobs and keep out of politics and that the chief justice may keep those judges not busy at work. Third, that a judicial council shall be created to study constantly improvements in the laws and procedure and the business of the courts. Fourth, to avoid a present ridiculous procedure of double trials in contested matters in the county court. Fifth, to get rid of the worst stigma of our judicial system, the justice of the peace courts, and place their jurisdiction with able and trained men, namely the county judges, and under magistrates selected by them and under referees appointed by them.

These represent changes and to some all changes are radical. The real question is, is our present system cumbersome and unsatisfactory? Ask the average layman and he will tell you.

"Equal Justice Under Law"

By WAYNE C. WILLIAMS

Of the Denver bar; former Attorney General of Colorado; former Special Assistant Attorney General of the United States.

The truest and best forum for the lawyer is an appellate court in which he can make an oral argument for the rights and interests of his client.

Here is the natural forum for a lawyer and here his forensic talents should show in their highest form.

The court ought to be as anxious to hear a lawyer argue his case orally as the lawyer is to present it.

I have always felt that there was the essence of real wisdom and practical sense in that custom of the United States Supreme Court in ordering oral arguments in practically all cases that come before it.

There seems to be no deviation from this rule of oral argument in all the long history of that greatest of all our courts and state appellate courts may well take a lesson from this wise custom. It is pleasant to note that our own state supreme court is hearing a progressively larger number of oral arguments in recent years.

I undertake to say that there is no satisfactory substitute for an oral argument before an appellate court. The printed brief never can give to a court that clear, full, consideration of the facts and issues of a case that oral arguments make possible. The oral argument clears the air; eliminates dubious theories, extraneous facts and matters and enables the judges to acquire the very best and clearest grasp of what the exact matter in dispute may be. A printed brief may or may not effect this result.

When the lawyer steps before a supreme court to argue his client's cause he is at the height of his professional career—especially if he appears before the greatest of all tribunals, in Washington.

All the above is preliminary to a short study of some great lawyers whom I have heard argue before the United States Supreme Court.

It so happens that I have had the good fortune to listen to many arguments before that great tribunal and make some study of the attitude, mannerisms and form of argument of some of America's greatest lawyers of this generation.

At the very head and front of this numerous galaxy I place Honorable James M. Beck, former Solicitor General of the United States.

He came nearer, to my mind, having all the requirements and qualities of a great lawyer, and was better equipped to argue in that court than any man I have ever heard address the court. Beck had a natural dignity (not stuffy or overbearing or stodgy), and to that he added a very fine, speaking voice; a gracious manner; an unusually fine diction so that his sentences came out freshly carved like a Shakespearen drama and possessing a quality of permanence and beauty that made them shine. You felt you could read the speech in print and that it would read as well as it sounded. Beck was, of course, master of his case. That is the first requisite of any good argument and woe to the lawyer who appears before that court without having mastered every fact, every phase of the law and every possibility of his case. He will find himself in trouble very quickly. That tribunal is *no place* to come unprepared or half-prepared. The distinguished justices will find it out first and quite rightly they will not permit the time of the court to be taken up by a lawyer who isn't getting anywhere in his argument. Chief Justice Taft (who was kindness itself) once stopped an attorney general from a certain state (not Colorado) and said, "My dear sir, you are getting nowhere. You are not enlightening the court and your record is hopelessly mixed. The court wants instruction on the facts and issues but your record and your argument is getting us nowhere. Let the argument stop here and the case be remanded for further testimony."

Nothing could exceed the humiliation and embarrassment of the lawyer to whom these words were addressed but he had it coming and had learned his lesson.

But to return to Beck and his style of argument. He had the faculty of stating a case more clearly in less words than any lawyer I have ever heard. He never used a superfluous word, never ran off into details, never hurried or stumbled; he would make a statement of his case in a few paragraphs and the court would have a composite picture of the whole matter at issue. His style of presentation was a fine subject for study and could be copied by every lawyer at the bar. It has always been a matter of astonishment to me that, when the chance came, Beck was not immediately advanced to the attorney generalship. He had earned it. Probably the next in line for distinc-

tion in oral argument is John W. Davis, also a former Solicitor General of the United States and now probably the accredited leader of the American Bar. Certainly he is the leader of the New York bar and that in itself places him high on the ladder of professional success.

I have heard Davis in several arguments but one in particular I shall not forget. His opponent opened the case and made most serious charge against Davis' clients, claiming they had manipulated the stock of a certain corporation and taken control of the company wrongfully. It was an immense and wealthy New York corporation and the money and other issues sounded like the biggest Wall street business.

I wondered how Davis would meet his opponents. He never cited a single authority, because the case turned on the facts not on the law. Davis began with a casual unhurried calmness that might have disarmed his adversary. He made an analysis of the complaint of the plaintiff, pointed out the true inwardness of the case; showed who was protesting and why and why they had no standing in court and had misconceived their remedy, if they had one. Piece by piece he ripped the plaintiff's case apart and when he had finished the plaintiff was without standing in the court and the court later so held. Davis has a smoothness of delivery, a quiet ease of presentation that disarms hostility or criticism. It is a pleasure to listen to him. He is without fear or resentment or any quality of pugnacious or hostile opposition in his manner of speech. You can't help but listen. And he is crystal clear. No wonder Chief Justice White said to an opponent of Davis, "Of course no one has due process of law when Mr. Davis is on the other side"—probably the neatest and most subtle compliment that court ever gave a lawyer.

Another very great argument that I heard was in the gold coin cases before the Supreme Court. Attorney General Homer S. Cummings presented the case for the government and if he had never appeared before that court on any other occasion he won laurels enough in that argument to stamp him as one of the great forensic champions of this generation. The issue turned on whether the United States Government was compelled to recognize the wording of certain of its obligations and pay certain issues of bonds in gold.

Cumming's opponents had a smart mathematician figure out the results, the losses and the mathematical possibilities if the case were decided for the government and gold need not be paid. It was a beautiful piece of work (mathematically) and was a whole bound volume by itself.

Everyone wondered how Cummings would meet this vast, ponderous, intricate mathematical book of argument. He picked up the book, looked at it with dubious curiosity and said, "If your honor please I shall not comment on this piece of work. It is the illegitimate offspring of a mathematical debauch."

It was a stunning blow. Not even the staid and dignified court could repress a smile. The court room echoed with murmurs and subdued sounds of mirth and the great mathematical argument was crushed in its inception.

Never had a lawyer smashed an elaborate argument with one phrase in such telling fashion as did Cummings in this address.

The fact is that Attorney General Cummings was one of the ablest and greatest of the distinguished lawyers who have occupied that exalted position and he had a grace of manner, a brilliancy of wit, a power of diction that marked him as an unusually gifted man. He was so much more than just a lawyer; so much more than a mere legalistic authority. He could give a light touch to the gravest, heaviest occasion. While his addresses do not smell of the lamp yet he has a literary equality of the legalistic and practical talks made in this intensely practical age.

Once upon a time I heard a New York lawyer carefully ignore a friendly suggestion from a member of the great tribunal—the lawyer was a veteran at the bar—in an appearance before the Supreme Court. Arguing for a certain principle he was interrupted by Justice Van Devanter who, helping him along, suggested a Maryland oyster case which the justice assured him was directly in point and sustained the argument he was making. Instead of courteously thanking the justice the lawyer went steadily ahead with his argument ignoring the friendly suggestion of the jutsice. Presently the justice again volunteered the same suggestion and cited the case. Again the lawyer ignored the remarks of the justice.

This sort of disdain puzzled me and after court had adjourned I asked the veteran clerk why the lawyer did it.

"Oh, he's just an old dog who is down here so often that it makes no difference to him what the justice says," replied the clerk and its still a mystery to me why a lawyer arguing a case before any court could impolitely ignore a friendly citation and corrobative argument from a judge on the bench.

Before I close these reminiscent accounts of great lawyers I have heard let me add something for the benefit of young lawyers who may suddenly be called upon some day to confront and meet in forensic combat this great and formidable court.

In New Mexico vs. Colorado I had the pleasure of listening to one of my staff from the attorney general's office argue a portion of that case and never was an argument better given. Oliver Dean, an assistant to the attorney general, argued the facts of the case, the law points being presented by his colleague.

Dean had never appeared before the Supreme Court of the United States. He was not a prominent lawyer (in a sense) and he had a difficult and intricate set of facts to unravel and present. He had a deep impressive voice, and deliberate manner and was as calm and collected as if arguing before a justice of the peace in Denver. He answered every question the judges asked him in such complete fashion that not one came back to argue with him. I should say that his presentation lacked nothing and was as good an argument on the facts as that tribunal ever heard. Yet he had never before appeared before that great court and never did again, but he was master of his case.

Let me sum up again by saying that, if you are opening the case, first of all present to the court a very brief picture of what the case is about, giving enough facts and enough logic to show what points are involved. This can usually be done in a few paragraphs and the court will then settle back and listen with more understanding of what you are presenting.

Rarely if ever should you quote the court's decisions for there is a very well fortified presumption that the justices know what they said in some previous case.

The lawyer must always be prepared to answer questions from the bench and these questions clarify the issues and give more point to the argument.

In questioning lawyers I especially want to refer to the manner of Justices Jackson and Rutledge. These two eminent justices are models for the manner and style of questioning lawyers from the bench. It is to be hoped that every other justice will follow the style of these two justices—never hostile, pugnacious, argumentative or seeming to seek disputation for its own sake, but asked with deference to the time and trend of thought of the lawyer who is arguing and asked for the obvious purpose of throwing more light on the case.

No citizen, whether he be a lawyer or not, can sit through a session of this great court, hear arguments and not be deeply impressed with the high character, fairness and ability of the great men who sit on that bench. He is certain to grasp more fully the truth of that motto which he read as he walked up the steps into the noble stone building where the court holds its sessions. Let me repeat that motto now—

"EQUAL JUSTICE UNDER LAW."

Lawyers in the Public Service

JUDGE FRANCIS J. KNAUSS is the presiding judge of the civil division of the Denver District Court this year. JUDGE JOSEPH E. COOK is the presiding judge of the criminal division. JUDGE JOSEPH J. WALSH has been transferred to the criminal division and JUDGE HENRY S. LINDSLEY to the civil division.

HAMLET J. BARRY, JR., DAVID V. DUNKLEE, WILLIAM V. HODGES, of Denver, VICTOR HUNGERFORD of Colorado Springs, and ROBERT L. STEARNS of Boulder, are members of the advisory committee of the Columbia Club of Colorado. JUSTIN W. BRIERLY, Denver, is president of the club.

WARWICK M. DOWNING, Denver, has been selected by the Publications Committee of the Mineral Law Section of the American Bar Association to participate in the writing of a volume on oil and gas conservation law. The volume is a cooperative work to be participated in by writers from each jurisdiction.