



1928

Appendix

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Recommended Citation

Lawrence, Aubrey (1928) "Appendix," *North Dakota Law Review*. Vol. 5: No. 1, Article 3.
Available at: <https://commons.und.edu/ndlr/vol5/iss1/3>

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APPENDIX

ACCRUED RESPONSIBILITIES

AUBREY LAWRENCE, President

During the past few years hundreds of Bar Association meetings have been held, both state and national; thousands of addresses have been made to lawyers within their own organizations; scores of legal magazines have been periodically published, filled with matters of interest to the legal profession, and each and every one of us have listened both through the eye and the ear to the thoughts of great men in our profession. Every conceivable subject, both as to legal principle and personal application has been treated. It would seem as though nothing was left to be said upon any subject or to any body of lawyers. However, what is true of law and its practice and of the legal profession and its members is but the ever present truth of life, that although basic truths may have existed for centuries, yet each generation and each time must personally accept and apply such principles and truths and must personally and individually comprehend and base their personal action on their acknowledgment or acceptance of the same.

Whatever then, may produce a thought; whatever then, may create a desire to a better understanding of long existing truths; whatever then, by way of suggestion may be presented for acceptance or rejection may possibly be fitting and appropriate in fulfillment of the duty which is placed upon the President of your Association to address you at the Annual Meeting.

It seems to me, that in the consideration of the papers presented at meetings of this character, and in the presentation by able and distinguished visitors of interesting legal situations, general subjects will be so fully covered that it may be well for us for one brief period to deal with the personal equation—the personal application not that there may be a desire to preach; not that there may be a need for the intrusion of our personal opinions upon our associates; not that we have any bigger or greater grasp of existing truths; not that we desire to assume the position of a teacher; but the man never lived so great or so omniscient that he could not benefit by the consideration of fundamentals, even if presented by an inferior.

In this day and age the matter of sentiment or the matter of moral and ethical principle is recognized as a fit and proper subject for the consideration of every man and woman, and in this so-called business age, it is well to pause for a moment and talk of ourselves and to ourselves.

Edward A. Filene, one of the greatest of financiers and business men, recently said:

“One of the most noteworthy developments of our ‘business age’ is the fact that ‘love your neighbor’ which has been preached through the ages as a necessary religious, moral and ethical principle, has in the development of capitalism become the only sure basis of continuing prosperity. This

may sound as if it were the statement of an idealistic preacher instead of the considered judgment of a hardheaded business man."

"For any one of us to enjoy the greatest possible permanent prosperity we must all—every one of us—be highly prosperous. That is, we must have what I call companionate prosperity."

If "companionate prosperity" is necessary for the highest business success, companionate and harmonious understanding and action must be had among the lawyers to permit them to fulfill the high duties of their calling.

This is a lawyer's organization; this is a talk to lawyers. How better then, can we advance the work of this organization and of our profession, than to exchange our thoughts on what we as lawyers have been, what we are, what we hope to be and what our place and mission in this present age is.

To a consideration therefore of matters of this personal and individual character I beg leave to present my thoughts.

To consider our business we must consider ourselves; to consider our purpose in life we must consider ourselves; to consider our place in life, social, business or national, we must consider ourselves and our surroundings.

The great Sala said:

"It is error to suppose that a man belongs to himself. No man does... He belongs to his wife, or his children, or his relations, or his creditors, or to society, in some form or other. He has his body, and that is all, and even for that he is answerable to society. In short, society is the master and man is the servant; and it is entirely according as society proves a good or bad master, whether he turns out a bad or a good servant."

Then the first duty which we have is a consideration of ourselves as affecting the body politic, the body business or the body government under which we exist.

Lord Hewart in his address to the American Bar Association in 1927 said:

"You remember the passage in the 'Republic' in which the discussion turns upon the best kind of state. The best is found to be the kind of state which approaches most nearly to the condition of the human body, and the organic unity of the body is illustrated by the case of a man who suffers a wound in his finger. With a wonderful apparatus of cumulative words and parts of words, Socrates, as you remember, describes how, so soon as the hurt is received, the whole organization of the man, stretching right through his body to his mind, is, upon the instant and as a whole conscious of the injury and feels, as a whole, a sympathetic pain with the part which is hurt. So that people do not say that 'the man's finger is in pain'; what they say is that 'the man is in pain in his finger.'

"Perhaps one may indulge the thought that there are some perils which democratic institutions might escape or

diminish if the truth of that inexhaustible allegory were more generally accepted and applied. How different, for example, is the frame of mind if instead of speaking of the 'grievances' of coal miners, or the 'grievances' of the unemployed, or the 'grievances' of those who cannot find houses to live in, etc."

And so we come again as we must always come, after a consideration of all fundamentals with reference to our place, to an acknowledgment of the necessity for individual study and to a realization of individual responsibility.

Let us consider for a moment whether a consideration of such things is of any importance at this time or whether it is not true that it is the one time in our social and national history when such considerations must be and are preeminently fitting and appropriate.

In the olden days the lawyer occupied a place of his own. He lived in a little world all of his own; he was an Alexander Selkirk, living by himself upon his own island and perhaps owing no obligation or responsibility to any person except to such as he would personally and individually come in contact with. The law as a profession, dealt solely with the securing of such learning as would permit the representation of the client upon the one particular matter in which that client was interested; upon perhaps solely the giving of counsel or the trying of a lawsuit. There that lawyer's duty ended and there his responsibility terminated.

It was the lawyer's whole existence unless he departed from the strict confine of his jurisdiction and entered the field of politics, or became a lawmaker or statesman, but one who remained a member of the profession concerned solely with the things involved in that profession, was purely the 'master of his fate and captain of his soul.'

Last year we listened to the able address of President McIntyre upon "The Lawyer" in which was given a splendid and comprehensive history of the legal profession which you will all recall, and which clearly shows the truth of this thought which I have just given you, that for hundreds of years we have remained as we thought, just a little superior, just a little bit higher in class, just a little bit more entrenched in divine individuality than the ordinary business man, the general layman or the commonplace citizen.

That is not true today. The lawyer is a member of what might be termed the universal profession. His contact is such with every part and parcel of existing social and governmental life that he has no right and perhaps no power to remain in professional and personal seclusion. No other calling, vocation or profession occupies the same station in life. The doctor deals with the human body; he cares for the health and welfare of the people; he has no particular public obligation except as the holding of some public position places him in a position where he is required to consider the public welfare. The architect deals only with the building of structures and the adornment of his home or city. The legislator deals with the making of laws; the Judge deals with the administration of laws; the business man deals with that particular part of the business life of the world to which he has attached himself, but the lawyer is in contact with and a part of each and every one of these things and many more. In fact, in all of the activities of life he is compelled to become a part and parcel thereof, and to participate therein. If that be true, if that is

the place of the lawyer then the first thought must be the individual responsibility as to each and every one of these contacts and when you attach individual responsibility, then you must ascertain what your place as a lawyer means to you and what things are necessary for you to properly, fittingly and justly carry out the universal contact.

The late President of the American Bar Association, Silas H. Strawn, in one of his addresses said:

"During the last fifty years and more especially since the beginning of this century, the persistent march of civilization, the activities of the inventor and of the scientist, and the amazing development in every field of human endeavor, have made the life of the lawyer of today one of constantly changing experience and increasing responsibility."

and another has said:

"The lawyer always has held and always will continue to hold a high place and to exert a commanding influence in the community in which he lives. DeTocqueville well said: 'The people in democratic states do not distrust the members of the legal profession, because it is well known that they are interested in serving the popular cause; and it listens to them without irritation because it does not attribute to them any sinister designs.'

"I deny assertions of the critics who say that the Bar is losing its influence or that the changing conditions which have made necessary the familiarity of the lawyer with the problems of business have made him any less a careful student of the law or a poorer citizen. He must know more law, more business, more politics and more about what is going on in the world than did the old-time lawyer."

Will we not therefore grasp more firmly the thought of individual and personal responsibility. No proper result can be secured without united effort. United effort must come from a harmonious combination of individual efforts, strength and power may remain individual but have the force of the aggregate, as someone so beautifully said:

"Distinct as the billows; yet one as the sea."

It is therefore through the comprehension of the individual responsibility and the union of thoughts and the harmony of action of ourselves through our associations that those things can be accomplished which we all, rightly thinking, desire to be accomplished.

As was so well said by President Young in 1926:

"Out of all the welter of agitation for improvement, the study of conditions, the plans for restatement of the law and other reforms, and the higher level of the profession, there is bound to come a more effective and satisfying administration of the law. But as members of the Bar we cannot sit complacently by and expect the evolution of greater efficiency unless we contribute to the evolving process by our individual and collective efforts to improve the existing order. The end sought is neither novel nor unreasonable. Means proposed for reaching it may be impracticable or premature, but if they are found to be so, other means can and will be devised. The

judicial branch of government is no less efficient than are the executive and legislative branches but reforms in all departments are under way. Because of their professional aspects, it is to be expected that the Bar will lend special aid to bring the movement for greater effectiveness in the administration of justice to wholesome fruition."

How fitting then that we should today and at this meeting consider these personal thoughts as the sequel of the splendid address of President Young of the more efficient administration of the law, and the scholarly address of President McIntyre upon the lawyer and his history, and having in mind the change in conditions, build upon the history of the lawyer and desiring more efficient administration of justice, is it not our task to accept individual and personal responsibility and working collectively as members of our profession, secure the consummation devoutly to be prayed for.

We have neither the time nor perhaps would it be fitting to concretely state the responsibilities which face us as individual members of our profession. You know them, you meet them in your daily life; you know what is demanded of you as a faithful, honest, loyal teacher of the law and member of the profession; you know what is expected of you by the world at large and you know what is necessary to develop the greatest good to the greatest number, and if we should attempt to state the individual responsibilities it perhaps would be a descent into minutia.

There are therefore several fundamental responsibilities which must appeal to all of us and which to my mind must be accepted by us. One of the first of these is *respect for ourselves*. No one can be respected in life who does not respect himself. No one can do good work who does not respect his own capabilities for doing that work. I do not mean by this, an overweening confidence of individual power; I do not mean offensive egoism. I do mean, however, that the fundamental basis of a successful carrying out of the work of each one of us is a respect for ourselves, and consequently, an absolute impossibility of doing that in our work which would place discredit upon us.

In a recent famous novel one of the characters was in a measure jeered at because of his unselfishness and self-sacrifice and the doing of good deeds to one who had betrayed him and bitterly hurt him, and when asked the reason why he did so, responded: "Just to be decent."

There is a world of philosophy in that statement. There should be within us the desire just to respect ourselves which will prevent us from the doing of any act which would call down the discredit upon the profession which is sometimes given to us. Respecting ourselves—we will be "decent."

There is no denying the fact that there is a somewhat popular feeling of distrust of the lawyer and of the practice of his profession among those who know not whereof they speak, or who study only surface showings, and the first and basic bar to any continuation or aggravation of this thought will be a respect in ourselves and of ourselves.

Next, as a part of this individual and personal responsibility, and as one of the foundations upon which we must build to find the proper place made necessary by the changing conditions to which we have referred, is that the *respect for the law* must in the first instance come from the lawyers themselves. How can we expect the layman to respect the law unless we, regardless of our petty personal differences or feelings, initiate that respect, and what is the law? It is the most important thing of life to every citizen: As Clarendon said: "The law is the standard and guardian of our liberty; it circumscribes and defends it; but to imagine liberty without a law, is to imagine every man with his sword in his hand to destroy him, who is weaker than himself."

The moment we who acknowledge servitude to the law by our actions or by our words, disclose to our neighbor, our associates and the citizen at large, disrespect for the law as laid down by duly constituted authority then we take away one of the greatest props of society and of government.

Shakespeare said: "We must not make a scarecrow of the law, setting it up to fear the birds of prey and let it keep one shape until custom makes it their prey and not their terror."

If this, the greatest nation that ever existed, is to continue to occupy its place in the sun, in the world's history, there must be a united and consistent effort to maintain respect for law.

Roscoe Pound has placed this thought in the most comprehensive language:

"Respect for law in the sense of respect for the legal ordering of relations and of conduct, which are at the foundation of civilized society, does not mean that particular legal precepts or particular legal institutions are to be beyond question. Law is the strongest agency of social control. It bears the brunt of the task of maintaining, furthering and transmitting civilization. This is a universal task."

I may add also and make the third individual responsibility to which I desire to direct your attention, *respect for the courts of our land*. The courts are but the machinery through which we operate our governmental affairs in that particular branch of natural life. Our difficulty may be that at times we fail to realize that when we desire only to criticize or show lack of respect for the individual who happens at that particular time to be sitting on the bench, we are in fact showing a disrespect for the court as an institution. This is as dangerous as a disrespect for the law or a failure to respect ourselves. How can we hope for a proper administration of the great affairs of life in which we are interested, of the proper accomplishment of all these things of business, art and science, which under the new conditions have been placed in contact with us unless we initiate, produce and maintain a proper respect for the machinery which is to carry out our desires and our wishes and our thoughts. If these things are beneficial to the world at large and to ourselves in particular, and if we help the machinery then must we acknowledge and respect that machinery as doing that for which it was intended.

Do we not permit some personal defeat, some so-called individual affront, some opinion as to the ability of an individual to overshadow the greater and more important thing necessary as one of the founda-

tion stones in building up a strong and substantial house of justice for the administration of justice to ourselves and to every citizen. It is by an individual and personal acceptance of responsibility that we must build up these foundations and must establish these necessary elements of respect for self, respect for law and respect for the courts.

As a necessary corollary to these basic principles if the lawyer is to take the place which the world now demands of him, there must be a respect for our government, its institutions and the principles upon which it is based.

As the Christian from time to time and as a pronouncement of this faith repeats the sublime Lord's prayer, let us repeat time and time again this from our Citizenship Creed:

"I believe that we Americans have the best government that has ever been created—the freest and the most just for all the people—and that it is my duty to uphold and defend this government at all time. I believe that just as the 'Minute Man of the Revolution' was ready upon a moment's notice to defend his rights against foreign usurpation, it is my duty as a patriotic American to be a 'Minute Man of the Constitution,' ready at all times to defend the long-established and cherished institutions of our government against attacks, either from within or without, and to do my part in preserving the blessings of liberty for which my Revolutionary forefathers fought and died.

"I believe that as a good American citizen I must maintain continuously a civic consciousness and conscience; that my country needs my active service in times of peace no less than in war; that patriotism must be a constituent part of my religion; that no prouder boast can emanate from my lips than truly to declare, 'I am an American citizen,' and that as an American citizen the Constitution of the United States ought to be as actual a part of my life and of my religion as the Sermon on the Mount."
Elihu Root said:

"We have come to take this government as we take the air and sunshine, as a matter of course. It was a mere gift and it has cost us nothing. We forget with our own race it is the result of a struggle that lasted for more than seven hundred years from the Norman Conquest to the surrender of Yorktown."

This magnificent governmental structure which has stood all this time and has furnished the world with a spectacle of a nation which preserves the liberty of its citizens must be continued upon the basic principles upon which it was founded, and unless we as the exponents of the law respect that government and the rights and principles upon which it is founded, time will destroy that government.

Solomon said: "Where there is no vision the people perish," and if the lawyer has no vision, if in disrespect for the government in which he is living, he looks only to the present moment, he provides for the future destruction and paves the way for the loss of all the great things for which we should stand.

Then again, there is the individual duty and obligation of respect for those who are to follow in our footsteps.

Goethe said: "The future of any nation at any given time depends upon the opinions of those under twenty-five years of age."

Our work will some day be at an end; our responsibilities as individual members of the profession will cease, but some way, somehow and by somebody that same work must be carried on and it must be carried on with an acknowledgment of these same responsibilities that we ourselves must adopt, and if we in our pride of position, in our superior age, we show our disrespect for immature wisdom, fail to extend the helping hand, we are simply tearing down and destroying the future as perfectly and as substantially as though we were tearing down the edifice with our own hands.

Then again, there must be a respect for the rights of others, and that respect must apply to all of the social and business conditions which confront us. A proper respect for the rights of others prevents us from litigating questions for our personal pecuniary benefit. Courts are not always necessary for the determination of rights. The whole aim and object and purpose of the legal machinery is to establish the rights of people, and the function of the lawyer is just as much in endeavoring to secure agreements out of court as in court, thus in another measure respect his profession and the rights of others and thus prevent and deny the unjust and unfair statement that lawyers are concerned only in getting of a lawsuit and the securing of a fee.

M. Maurice Bokanowski, the great Frenchman who addressed the Bar Association in 1927 said:

"Within each country it is our high privilege to conciliate the conflicting interests of our fellow citizens. We all know how respectable, how compelling, how tyrannical, how blind those interests can be. In the privacy of our chambers, at grips with opposing interests and passions, it is we who must find honorable compromises to enable individuals, corporations and communities to live and let live, to cooperate instead of wasting their substance in ruinous strife.

"That, you will know, is the honor and one of the purest joys of our profession. We bring men together with hatred in their hearts, honestly convinced that they can prosper only through the downfall of their opponents. When they leave our chambers it is often with sincere regret and shame of their past quarrels and a firm intent to cooperate in the future for their own good and that of the community."

But it is wholly unnecessary for me to give further concrete applications of the duties and responsibilities which surround our daily life. These are not duties and responsibilities which we can meet by the passage of resolutions at Bar Association meetings; these are not the duties and responsibilities which may be fulfilled by becoming the subject of addresses to the public except as we may get others to believe as we do, but they are the duties that lie close at hand with each and every member of this profession, whether he practices in the city of New York, the city of Minot or a village hamlet. These

are a part and parcel of the lawyer's responsibilities to himself and to the greatest profession in the world.

"Now to what does all this lead? Scholars have written and Bar Associations have passed resolutions on law reform. We have had research and investigation until the truth is as clear as the noonday sun. There is nothing novel in anything I have said tonight of the causes of our difficulty. What I emphasize, however, is that the letter killeth and the spirit giveth life. What we need is a will to reform. If we have that will, reform will come largely without any change in statute or rule."—*New Professional Psychology Essential for Law Reform* by Joseph M. Proskauer.

Hon. Joseph M. Proskauer, Judge of the Appellate Division of the Supreme Court of New York said:

"Workable law reform will not be accomplished merely by specific change in statute and rule. It must rest largely on a fundamental change in the group psychology of the legal profession toward its function and of the law psychological attitude toward the administration of justice."

It is but for us to take this into our own minds and hearts and realize that there is something beyond the mere drawing of a paper; the trial of a lawsuit and the securing of the fee. We have chosen to accept a calling that places upon us these responsibilities.

Silas H. Strawn wisely said:

"Why are lawyers chosen for these great responsibilities? Is it not because they have greater knowledge of government and of laws, they have minds trained and disciplined to think accurately and clearly, the capacity to reason dispassionately, to see things objectively rather than subjectively, the will to distinguish between right and wrong and the facility to express their thoughts?"

"The practice of law necessarily involves a combination of the intellectual with the practical. The successful lawyer must be intellectual in order that his knowledge may be continuously increased and his view broadened. And yet, however erudite he may become, he will accomplish little if he is not able quickly to apply his fund of information to the practical solution of the problems which are his to solve."

And let me state the reason given in other language and by the great Elihu Root at a conference of the Bar Association delegates in Washington in 1922, where he said:

"Not only has the practice of the law become complicated, but the development of the law has become difficult. New conditions of life surround us; capital and labor, machinery and transportation, social and economic questions of the greatest, most vital interest and importance, the effects of taxation, the social structure, justice to the poor and justice to the rich—a vast array of difficult and complicated questions that somebody has got to solve, or we here in this country

will suffer as the poor creatures in Russia are suffering because of a violation of economic law, whose decrees are inexorable and cruel. Somebody has got to solve these questions. How are they to be solved? I am sure all hope they will be solved by the application to the new conditions of the old principles of justice out of which grew our institutions. But to do that you must have somebody who understands those principles, their history, their reason, their spirit, their capacity for extension, and their right application. Who is to have that? Who but the Bar?" *American Bar Association Journal* November 1927 Issue, p. 616.

Commenting upon this it was said:

"Few lawyers will frankly admit that they fail to measure up to the standards required of them as lawyers or as citizens. In self-defense they deny that they fall short of the ideal specifications. Yet no lawyer with a proper appreciation of his duty and responsibility to society can deny that in many respects he could do better.

"It is said that the standard among lawyers is in a direct ratio to the average of good citizenship in the community. This points again to an obligation on the part of the legal profession. At present, the mental attitude of a large proportion of our people towards law is fundamentally a serious obstacle in the way of an effective and efficient administration of justice. The people are lax in their attitude toward the enforcement of law and order, partly due, no doubt, as has been pointed out, to the frequent miscarriage of justice. At any rate, there is generally a growing disregard of the obligations of citizenship or else a failure on the part of the people to appreciate that they are responsible partners in our system of government. They forget or else they are ignorant of their responsibilities under the constitution.—*Obligation of the Bar to the State and to the People*, by Gen. John J. Pershing.

And so if we can convey any message, if we can present to you for consideration, if we can through our awkward language state the great desires, the sincere prayer of him who addresses you, it is that these things, these thoughts of individual and personal responsibility may be considered; that we may at least start your thought in that direction for your own consideration and determination, and when this is done; when our responsibilities as they now exist are accepted we shall have done our part in the development of that great force in the world known as Justice.

"Justice, sir," said Webster, "is the great interest of man on earth. It is the ligament which holds civilized being and civilized nations together. Wherever her temple stands, and so long as it is duly honored, there is a foundation for social security, general happiness, and the improvement and progress of our race. And whoever labors on this edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to raise its august dome still higher in the skies, connects himself in name, and fame, and character, with that which is and must be as durable as the frame of human society."



FREDERICK F. FAVILLE
Supreme Court of Iowa