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Law Day Address

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Law Day was established, under the auspices of the American Bar Association during the administration of my long time friend Charles S. Rhyme as President of that Association, by Proclamation of the President of the United States in 1958, to counteract the widespread propaganda by the Communists on the same day annually in many counties of Europe. Once again, and today for the eighth time, May 1 has been designated, under a resolution adopted by the Congress of the United States, as a special day of celebration to be observed by the people of this nation to recall and to express their appreciation of their liberties under our constitutional form of representative democratic government and to reaffirm publicly their loyalty to the United States of America. The current proclamation of the President of the United States calls upon the American people to rededicate themselves to the ideals of our nation of equality and justice under law and to recognize our responsibilities as free men. It emphasizes the necessity and the primary duties of all of us to advance individual freedom and individual opportunity, to curb lawlessness, and to achieve equal justice for all of our citizens. It recognizes the fundamental truth that our lives, our liberty and our right to pursue our individual destinies are dependent upon our system of law, constitutional and statutory, and the independence of our courts.

It is, therefore, fitting that this observance of this annual event should be sponsored by and conducted in an assembly of members of the legal profession under the auspices of the Kanawha County Bar Association at the site of the administration of justice in the courthouse of this county.

It is well that members of the bench and the bar participate in these deliberations and in this reflective ceremony, for throughout many generations in the history of the common law the legal profession, of which all of us are proud to be members, though at times experiencing periods of unpopularity, has been justly and traditionally recognized and characterized and singularly set apart as

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* This paper was originally delivered at a session of the Circuit Court of Kanawha County in the Kanawha County courthouse, Charleston, West Virginia, May 1, 1965.
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an ancient and honorable profession. Lawyers, in large measure as we know them today, have existed and have been active in the development of the common law, which is our priceless legal heritage, since the early part of the fourteenth century through the instrumentality of the English Inns of Court and, as those of us who have visited them know, in the language of those ancient institutions of legal lore, the legal profession is always referred to as the ancient and honorable profession of the law. Also, traditionally, lawyers have played a prominent and at times controlling part in the creation, adoption and preservation of our system of government in the nation and in the several states of the Union. Thirty-three of the fifty-five attending members of the federal constitutional convention of 17871 and twenty-one of the thirty-eight signers of the Constitution of the United States were lawyers.2 Seventeen of the sixty-one members of the convention which adopted the first constitution of this state in 18633 and thirty-four of the seventy-eight members of the convention which met in Charleston in 1872 and adopted the present constitution of this state4 were members of the legal profession. The primary responsibility and the ultimate object of the members of the bench and the bar in their service of the public is the development and the maintenance of a legal system which will promote and in large measure achieve the prompt and impartial administration of justice which is the chief end of government among free men as we know and cherish our American governmental system. In the administration of justice the bench and the bar are joint participants and each has its essential part

to play. Though the courts determine and declare the legal principles applicable in the administration of justice, the aid and assistance of morally and professionally qualified members of the bar, who as all of us know, are officers of the courts in which they practice, are essential to the proper operation of our judicial system. Courts without competent counsel can not function efficiently or faithfully discharge the important duties which they are established to perform.

In order to perform their essential functions and to discharge their fundamental obligations, the courts, whose members are always selected from members of the bar, must be composed of judges who individually possess the basic minimum qualification that each of them should, in the words of one of the wisest of men, the Greek philosopher Socrates, hear courteously, answer wisely, consider soberly and decide impartially. The members of the bar who function as officers of the court should possess, as basic minimum qualifications, honesty, adequate legal learning, courage, industry, dependability and loyalty to the case of the client whose rights they are enjoined to safeguard and protect. By complying with the foregoing standards for the conduct of the bench and the bar, the members of the legal profession contribute to the advancement, maintenance and preservation of our cherished system of law and government.

Law as we Americans know and apply it in the affairs of our daily lives is the intangible force that makes possible freedom and progress. It is law that prevents chaos and preserves order in our affairs, that enables us to lift our sights above mere existence and survival, to accumulate possessions, to seek and acquire knowledge and to engage in the pursuit of happiness in our daily lives. Under our form of government law operates effectively throughout our nation at all governmental levels and is the one common force which functions in the wide variety of activities conducted by local, state and federal governmental agencies to administer justice to all persons alike. From the adoption of the Constitution of the United States to the present, law has been the force which has maintained and preserved our complicated local, state and national governmental systems. The law is supreme and its supremacy is the concept which has controlled the operation of our government in all its aspects. That concept must continue to endure and guide us in all governmental activities. For whether we realize it or do not realize
it, or whether we like it or do not like it, the law affects and controls our daily conduct throughout the entire period of our human existence. It has been truly said that when law ends tyranny and chaos begin.

In this state and nation, unlike some other states and nations whose ideologies we condemn and reject, the source of all governmental power, translated into law, is, of course, the people. In the delegation and in the exercise of that power, we should ever remember the solemn admonition set forth in article III, section 20, of the constitution of this state that “Free government and the blessings of liberty can be preserved to any people only by a firm adherence to justice, moderation, temperance, frugality and virtue, and by a frequent recurrence to fundamental principles.” How inspiring and how timely, in these trying days of constantly suggested changes and recurring confusions, are these expressions of truth and wisdom!

Our courts of law are a part of the judicial system of this state and of this nation, and that system is one of the three separate and independent branches of the form of government under which we live. That government is a government of law which, however, is necessarily administered by men, the proper selection of whom for that purpose is the grave concern of every citizen of this state and nation. For the kind of government and the benefits which any government affords its citizens can not rise above the competency and the character of the service rendered by those who direct and administer its operation and activities. In this nation, unlike many others which are ruled by a single or a multilateral dictatorship, no person, regardless of his official position, is above the law but every person is, in every sense, subject and accountable to the law.

This year, in the observance of Law Day, particular attention is directed to the nature of and the advantages and the responsibilities associated with the status of American citizenship. If the Roman of the ancient world, whose rights were not protected by a constitution which limited the power of government against encroachment or abridgement, but depended entirely upon the will of the ruler, could proudly boast of his status as a Roman citizen how much more pride and appreciation should we, as American citizens, have for the many priceless privileges and advantages with which we are favored over the citizens of any other nation of the world?
As citizens we possess rights and privileges which give us the status of truly free men. Among these rights, to mention only a few, are freedom of religion, freedom of the press, the right of assembly and to petition the government for redress of grievances; the right of locomotion which Blackstone regarded as the essential element of personal freedom; the right to release by habeas corpus from illegal detention; the right to trial by jury; the right to own, use and dispose of property; the right to privacy in the home; the right to free elections and the use of the secret ballot; the right to contract; and the presumption of innocence, the privilege against self-incrimination, the protection from unreasonable search and seizure, and the constitutional guarantee of due process of law. Those rights, however, give rise to reciprocal duties and responsibilities which must be discharged by every worthy citizen, and some of those important and imperative duties, according to the canons of American Citizenship, promulgated by the Committee on American Citizenship of the American Bar Association, are: To uphold the laws of the United States and of state and local governmental authorities; to defend our country from invasion and to protect our government from the danger of force, violence and subversion; to encourage and maintain respect for law and order and to insist upon the solution of differences and grievances by processes of law and not by resort to violence or other unlawful means; to support the authorities charged with the enforcement and the administration of our laws and to be willing to act as a witness and to serve as a juror in connection with legal proceedings; to harbor no prejudice against anyone because of race, religion or national origin; to maintain pride in family, heritage and church and in our community, state and nation; to keep informed about issues and candidates and to vote in every election; to respect the rights and opinions of others; to participate in religious, charitable, civic, educational and other activities to promote the welfare of the community; and to acknowledge that responsibilities are as important as rights in the maintenance and perservation of justice and freedom.

5 U.S. CONST. amend. I.
6 2 BLACKSTONE, COMMENTARIES 134 (4th ed. 1770).
8 U.S. CONST. amend. VII.
9 U.S. CONST. amend. V, XIV.
10 U.S. CONST. amend. IV.
11 U.S. CONST. amend. V, XIV.
These rights and these responsibilities of American citizenship, which exist nowhere else in the world or under any other form of government, are, the differentiating factors between the free citizen of the United States and the enslaved citizen of the Soviet Union whose hostile ideology we condemn and must expel from our midst and whose subversive activities, at home and abroad, we must overcome and destroy. Because these blessings of freedom are the natural heritage of the native born American citizen, he is prone to consider them lightly and to fail in the discharge of his attendant imperative obligations. Though he possesses and enjoys these priceless privileges almost as a matter of course, it is his solemn obligation personally to understand and maintain the American way of life, to honor it by his own exemplary conduct, and to preserve and transmit it intact to succeeding generations. To stimulate and intensify this attitude towards American citizenship is likewise the responsibility of the members of the legal profession, and their faithful and effective compliance with that requirement will promote the welfare and contribute to the maintenance and the preservation of our American form of representative, constitutional government.

All of us, judges, lawyers as officers of the courts, and citizens together share the responsibility of maintaining, strengthening and preserving for future generations a governmental system which must provide and unconditionally guarantee equal justice under law to every person alike and without discrimination, fear or favor; and this guarantee is an indispensable element of our heritage as free American citizens.

In preserving our ideals of equal justice under law in this day of dictators, who have replaced law with force throughout most of the world, we need the same love of liberty and of the freedom of the individual, the same unqualified respect for law and the same faith in divine guidance which inspired our forefathers in this state and nation to establish our American form of government as an example and as an enduring guarantee of freedom to liberty-loving peoples everywhere. In the administration of the affairs and processes of government under our federal and state constitutions, which form the bases of our existing governmental systems, we must continue in the constitution of this state, and in any subsequent revision of it by convention or otherwise, the guarantees of individual rights by express limitations of the powers of government which
are the distinguishing features of government under a written constitution, the primary purpose of which is the express limitation of such powers. We must preserve the tripartite division of the powers of government among its legislative, executive and judicial branches, which, in fact, represents and safeguards the difference between the American free man and the communistic slave, and the systems of checks and balances, imposing restraints upon the power of each of these branches of government by the others, and we must always recognize the system of dual sovereignty between the nation and the state. The body of the original draft of the federal constitution contains at least twenty express limitations of the powers of government, and most of the twenty-three amendments impose limitations of the powers of the federal government or of the states of the Union. The tripartite division of the powers of government and the system of checks and balances are vital and essential to the preservation of a democratic form of government and are the insurmountable barriers to any form of tyranny or dictatorship, for no person or official or group can become a dictator unless such person or official or group possesses or can exercise the absolute and undivided power to govern.

In any revision of our present constitution a reasonable limitation of the taxing power should be continued in order to prevent excessively burdensome taxation and the wasteful misuse of public funds which an unlimited taxing power encourages and creates and which substantially restricts the freedom of the individual, imperils free enterprise and leads to deficit financing and destructive inflation. In these days of governmental encroachment in areas of private enterprise and habitual deficit spending, which section 51, article VI, of the Budget Amendment adopted in 1918, was designed by Governor Cornwell to prevent and has since prevented, and which the people of this state by separate elections in 1926, 1930, 1940 and 1962 refused to repeal, the people of this state should continue to remember the warning of Daniel Webster in his argument in the famous case of McCulloch v. Maryland, decided in 1819, and incorporated in the opinion rendered by Chief Justice Marshall, that the unlimited power to tax involves the power to destroy.

12 U.S. CONST. art. I, § 9, 10.
14 W. VA. CONST. art. VI, § 51.
That warning should be heeded at all times by every department of government. The destructive use of the taxing power should never be encouraged or permitted, and it is the peculiar responsibility of the legal profession to be alert to such matters at all times and to exert their special knowledge and their influence to see that such limitations of powers are recognized and continued in any modification or revision of our fundamental law which every official and every lawyer has sworn to support.

Basic constitutional principles do not change with the passage of time; instead they are as immutable as the provisions of the Magna Carta and the Declaration of Independence which no one would repeal or modify solely because they have long endured. Of course, governments ruled by autocrats or dictators function more efficiently and expeditiously but in such governments there is no individual freedom that may be considered comparable to that enjoyed by citizens of a constitutional form of government in which checks and balances are operative and the powers of government are expressly restricted by constitutional limitation. I would readily sacrifice speed and efficiency in the attainment of governmental objectives for the enjoyment and preservation of the greater freedom of the individual citizen. Naturally in the course of the operations of government constitutional amendments become necessary; but when that necessity arises and occurs only infrequently, any revision or amendment, whether completed by convention or by vote upon separate provisions, should be effected only after studied consideration and satisfactory understanding of the particular need, the purpose and the effect of the proposed modification in promoting the freedom, peace and happiness of the people; and it would seem, that as a general proposition, given a sound constitution, most of the ills of existing government may best be remedied and the specific problems most satisfactorily resolved by statesmanship and dedicated public service of those who administer the affairs of government rather than by frequent, hurried or ill-considered amendment of the fundamental law of the state which is always attended with some degree of risk.

Permit me to say, in conclusion, that the formal observances of Law Day throughout this nation should operate as a call of duty for all of us to preserve for ourselves and to transmit unimpaired to our posterity the blessings of liberty under law, which rightfully belong and which must be made secure to every American.