

The Eighth Annual
Chester Bedell Memorial Lecture

"THE INDEPENDENCE OF THE AMERICAN LAWYER"

Presented to The Florida Bar

By

The Chester Bedell Memorial Foundation

in cooperation with

The Trial Lawyers Section

Walt Disney World Dolphin Resort

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of

Stamper, Otis & Burrage

Antlers, Oklahoma

“THE INDEPENDENCE OF THE AMERICAN LAWYER”

MR. STAMPER:

I am honored to have been asked to speak in a series dedicated to a great lawyer, Chester Bedell. The origin of our friendship was unusual. I arise early wherever I am and so did Mr. Bedell. In Bar meetings across the country, it happened that he and I were often the first customers in the hotel's coffee shop. We enjoyed coffee, conversation, and companionship. I cherish his memory.

I was surprised a few months ago when Chesterfield Smith called me to extend the invitation to be here. When he mentioned Chester Bedell, I readily accepted. I treasure many friends in your Bar. I was in the House of Delegates during the presidency of three great Floridians. I shan't take time to enumerate the great men from Florida with whom I have enjoyed friendship, but I do want to pay tribute to two great ladies whose friendship I have enjoyed, Judge Mattie Bell Davis and Martha Barnett.

I don't know how I happened to be asked to be here. Your previous speakers have been great names in the profession. I have read and enjoyed each of their addresses. I know I was not asked because of my political correctness, because it is suspect. In fact when Bob Ervin learned I would be here, he dropped me a note suggesting that before coming, I should take a course in multi-cultural relations. In deference to Bob's wisdom, I went out to Berkeley for a week. The course was revealing. It was taught by Angela Davis. We were seated alphabetically. I sat next to a nice lady from Cincinnati named Schott. I think she is a baseball player.

JOE STAMPER,

of Antlers, Oklahoma is a classic example of an intelligent, accomplished and hard-working lawyer who could have practiced anywhere in the country but chose to stay in his small and much loved hometown. Upon completion of his legal education at the University of Oklahoma in 1935, he served as the local county attorney and soon thereafter, as a member of the State Industrial Commission. After serving in Europe during World War II, he returned to Antlers where he distinguished himself throughout the country as a trial lawyer. He is now the senior partner with the firm of Stamper, Otis & Burrage and he intends to continue practicing law for many more years. He is a recognized leader of the Bar and has received many honors and awards. He has devoted countless years of active service to the American Bar Association and other professional groups. He is a Fellow of the American College of Trial Lawyers and a worthy representative of the profession.

Mr. Civiletti spoke to you of the threat from public, and sometimes political, perceptions that make us targets of the press and occasionally of politicians. Mr. Sullivan spoke of the Congressional and sometimes judicial interference with the freedom of corporate counsel. Mr. Chambers discussed the need for courage in the representation of unpopular causes. All these concerns are serious.

The Bar is somewhat similar to Congress. The people generally are dissatisfied with Congress but usually send their own representative for another term. But every once in a while, they anger at their own incumbent and let him come home, or more often, join the Washington lobby.

As long as clients were just displeased with the lawyers other than their own, I did not worry. But increasingly they have become displeased with us. And it has less to do with the outcome of the litigation than with its expense, harassment, and delays. If they win, they still lose. They can't understand the interminable status conferences, pre-pretrial, pre-trials, mini-trials, motions for this and motions for that.

Both we and the judiciary write reams as to the meaning of a single phrase in a contract or a prior appellate decision. Law Clerks seek to show their erudition to the Judges they serve or the firms they hope to join. We have old briefs in the computers and with each case, something is added. Judges don't have time to wean the chaff from the grain. Our briefs have become clouds without rain. I used to write briefs in longhand. It might be a good idea for us all. And I know Judges who scribbled out their opinions. I suggest it might be a good idea to require.

A national corporation which my little firm sometimes represents sent us, and their lawyers nationwide, a request for our ideas

about change in counsel fees from hourly charges to per case fees. It probably couldn't be done, but if it could, litigation would be much shorter and justice would be as well served.

People read about and sometimes experience the frivolous lawsuit. A man sued a travel agent in Oklahoma City recently because the advertising stressed Puerto Vallarta's ideal climate. Rain had spoiled the plaintiff's vacation. Despite the frivolity of plaintiff's case, I am sure the agent or his insurer spent a couple of thousand dollars to obtain dismissal. Even if we had the British system of charging unsuccessful plaintiffs with fees, most such plaintiffs could not respond to judgment. Lest I be misunderstood, I do not advocate the British system. It would destroy the contingent fee system through which the poor, the maimed, and the wronged are able to obtain compensation for their injuries.

There are many abuses in litigation. The search for deep pockets brings in defendants who could not have been tortfeasors but upon which juries may look with such disfavor as to require payment through the nose.

To relate one of my own experiences, the nation's largest processor of creosoted posts is located in Antlers. He sends them to almost every state in the Union. One of his dealers in Louisiana sold some posts to a farmer who used them as the framework for a diving board on a farm pond. His son dived. The water was too shallow and the young man, sad to say, broke his neck. Our client was sued on the theory that the creosote on the poles driven into the pond created a skim on the water surface which misled the diver as to the water's depth. A Federal Judge dismissed that one without even a hearing.

Are we zealous enough in enforcement of discipline? Have the California lawyers who trumped up personal injury and conspired

with physicians to fake workers' comp claims been disbarred? I don't know.

An investigation of workers' compensation in my own state recently revealed that one man, served by one lawyer and one doctor, had been awarded maximum compensation for permanent total disability three times.

Our great national Association has helped alienate large sections of our population by the sponsorship of various controversial social causes. The great accomplishments of the ABA in the promotion of justice and the education of the Bench and Bar are overshadowed in the public mind by media coverage of these controversial issues.

Abortion is not a matter about which I have many fixed opinions. It is replete with medical and religious questions. When does life begin? Is abortion a sin? I can't say with certainty. But I do know that most Americans are opposed to abortion in the ninth month; but probably favor abortion in some instances. But the debates in the House of Delegates have featured the outer ends of the spectrum. I know that in my town and in its churches, our present stand on abortion has left a very bad impression of the Bar. I don't think we should indulge in the expression of pontifical stands on such an issue.

Our Association has made a fetish of defending people sentenced to death.

Oft-times fiction is better than fact to illustrate a point, so let me invent the ancient and venerable New York firm of Windsor, Buckingham, Holyrood and Hampton-Court founded before the War between the States as Windsor, Buckingham, Holyrood & Hampton. It represents old money and thus has offices in Florida and California, as well as London and Paris. Except for Ms.

Hampton-hyphen-Court, the great-granddaughter of the original Hampton, the firm name has never changed, although Ms. Hampton-hyphen-Court is the only descendant of any of the founders in the firm.

Mr. Casper Zablonksi is now the managing partner. He was called by a friend high in the councils of the American Bar Association which has a program to enlist outstanding firms in pro bono service to assist appeals to the U.S. Supreme Court in death sentences. It has never been the policy of Windsor, Buckingham, Holyrood and Hampton, or of Windsor, Buckingham, Holyrood and Hampton-Court, to seek publicity. In fact, they have laid low.

But so many of the firm's fourth or fifth generation multi-millionaire clients living in Paris or Fort Lauderdale or Santa Barbara have become sympathetic with causes, Mr. Zablonksi thought it appropriate to accede to this request.

Casper was assured that the appeal would probably be successful. There were two great errors in the record. The trial Judge had used the word "deliberate" rather than "willful" in the Jury Instructions and during the second stage of the trial, one of the victim's mother had been in the courtroom and was seen to daub her eyes with a handkerchief.

Now, "Who shall we pick?" was the question at the Monday morning partners' meeting. The lot fell to George Smith, not related to Chesterfield, Reese or Sam, three years out of Harvard, magna cum laude and Coif. Mr. Zablonksi and Ms. Hampton-Court left their corner offices and went to George's cubicle where he puts in about 300 eleven hour days a year which the firm bills at \$200 per hour out of which he is paid \$80,000.

The committee informed George of his new assignment, told him he would be relieved of enough other duties to attend to these

important appeals and intimated that his success in the venture would be a feather in his cap come partner-picking time.

George, the hero of this fable, stood, knees aquiver, and said:

I can see myself when I am your age, Mr. Zablonksi, being asked by my grandchildren, 'Grandfather, what was your most famous case?' 'Well, children, I kept John Doe and Richard Roe from going to the gas chamber as a result of the seventh and eighth appeals.' They ask, 'What did they do, Grandfather?' and I tell them, 'They herded three teenagers working in a convenience store, a pregnant customer and an 82 year old man who came into the store to buy some cat food into the back room and mowed them down with a rapid fire weapon.' Mr. Zablonksi and Ms. Hampton-Court, my answer is, 'No thanks.'

Now, that was an independent lawyer. Incidentally, he is now a partner and is expected to be the managing partner when Mr. Zablonksi retires.

Lawyers can only do their jobs if they are afforded sufficient time. The FBI, the IRS, the SEC or the FTC may use an army of agents, accountants, investigators for four or five years before indictment of a suspect. He is then indicted on Thursday, arraigned the next Tuesday and to do him the great favor of a speedy trial, it is set for the 18th of the next month. Few lawyers can suddenly clear schedules to do in a few weeks, the work involved in an adequate defense. So what can John do. He makes a deal, or he agrees to testify and sometimes untruthfully, against a more delectable target. Some Judges that I know agree with me that the Speedy Trial Act has as many weaknesses as the sentencing guidelines.

The Courts and Legislatures have developed some new theories which may result in great injustice. A woman who kills her husband now does not commit virocide. She just suffered from the battered woman syndrome.

It has become quite frequent in child custody cases for the wife to accuse the husband of sexual abuse of the children. Such claims are usually successful. To be charged is to be deemed guilty. But the Family Law Section of the ABA met in San Diego recently and polled 59 matrimonial specialists. 25% of those polled said the charges were false half the time; 25% said they were false most of the time. I find that the Courts despair of deciding truth or falsity so they turn the question over to pseudo-scientists who decide the matter by having the children draw pictures or make ink blots.

Do you think these wrongly charged fathers trust our legal system?

Dean Harry Wellington, formerly of Yale and now of New York Law School, spoke recently of the "two cultures phenomenon" in Law School faculties and said that too many teachers are highly critical of the law and have borrowed theories and vocabulary from the fields of philosophy, social theory and literary criticism.

I agree with the Dean. Our judicial system is not perfect, but like Churchill said of democracy, it's the best system that has been devised.

Our country is so concerned with ethnic considerations that we have done away with the defense of double jeopardy as was demonstrated in California this year and may be duplicated here in Orlando. Recently, in California, a lawyer in a case concerning a lawyer's disqualification used a term long used in such cases - - "Chinese Wall" - - and was criticized by an appellate court as being ethnically biased.

Will we get to the point that the three most dastardly crimes are saying something politically incorrect, lying to Congress, and asking a feminine associate to brew a pot of coffee? We need to treat each other with a little more humor and tolerance and get the chips off our shoulders.

What do students' parents think of the law when children can't take Bibles or the Torah or the Koran to school, but can bring home condoms?

Our independence is threatened. The threats are from the government, from the public, from both those we sue and our own clients. We can best preserve our independence by realizing that we are members of a learned profession. We are not in a cut-throat business. We should be concerned more with the service we render than the bottom line. We should avoid charging for unfruitful hours. When we see injustice about to be done, we should represent its victims even though we get little or no pay. We should learn that there is life below the fortieth floor.

There is great satisfaction in being a lawyer, in representing one's client with zeal and fidelity, in so conducting ourselves in court that Judges respect us, in treating our opponents with courtesy. To do so is to be desired more than gold and is sweeter than honey or even the drippings of the honeycomb.

From what I have heard of Chester Bedell, I hope he would agree with part of what I have said. And that's the reason he was so greatly revered in the State of Florida.

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Hon. Parker L. McDonald	1987
Robert W. Meserve	1988
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