Address Prepared by Robert H. Jackson
Assistant General Counsel, Treasury Department, Washington, D. C.
To be Delivered before the Beaver County Bar Association
Brodhead Hotel, Beaver Falls, Pa.
At 6:15 Saturday Evening, March 30, 1935

In these times when each professional and business group seeks to learn where it is going, none surveys its future with more anxiety than does the bar. Our ancient profession has survived many social and economic overturns and will doubtless survive more, but the trend of the profession is disturbing its more thoughtful members.

Perhaps the most significant development in recent history of the bar is the gradual passing of general practitioners. The country bar and the bar of even substantial cities had, in its comparatively recent past, eminent men in general practice whose field of effort included all types of litigations for all types of people. They were independent of any economic group, their leadership was powerful and courageous. Their range of knowledge was broad. Their sympathies were with all groups. They refused to be hurried. They were much in court. They had many foes but few dominating retainers. A bar of this type stood in every community as outposts of law and order. Such lawyers, even if sometimes crude and not of the highest education, nevertheless, represented in their communities the aspiration for justice and for the supremacy of reason over brute strength and the substitution of logic for blows.

The reason for the disappearance of this lawyer of general practice is the disappearance of the demand for his services and the destruction of the clients who sought his help. His clients grew larger with the growth and concentration of wealth. They have adopted corporate form and tend to withdraw their support from the general independent practitioner and to utilize the services of men more steadily and perhaps exclusively attached to their own interests. In the smaller communities clients have disappeared and local merchants, small manufacturing units, locally controlled utilities have disappeared. Each consolidation, merger, purchase or bankruptcy which destroyed these smaller units destroyed clients and concentrated the legal business of a large number of general practitioners in the offices of larger city firms. In the United States in 1929 there were only 600,000 families whose aggregate family income was $10,000, and the census of 1930 shows 139,069 lawyers in the United States.

A distinguished and well qualified friend of mine has been quoted as saying in a facetious moment that the ideal client is a rich man thoroughly scared. It is perfectly apparent that there are not enough of those to go around. Plenty of people, as they look at the insecurity of their futures, are thoroughly scared but they lack the other qualifications of desirable clients. The middle class bar is suffering extinction, along with its clients. The small tradespeople are becoming employees and have no use for a lawyer except in a case of personal injury or petty offense. The young lawyer finds negligence and small criminal cases about the only business that is not reduced to possession by large law firms.

In place of the general practitioner we have the development in the legal profession, as in other professions, of the specialist. Large law firms are but legal clinics which bring together a group of specialists. Someone defined a specialist as "one who learns more and more about less and less." It is probable that there is nothing we can do about the tendency to specialize except to lament about it.

Specialization has, however, a distinct effect upon the prospects of the profession and is a distinct menace to the future of the bar. We are turning out of our law schools a great overproduction of lawyers. Economic conditions have answered the oversupply by plowing under about every third lawyer. I have elsewhere suggested that it would be less costly and more humane if the New Deal would pay the law schools for not producing lawyers. The young man coming to the bar finds the desirable field preempted by specialists. If he starts practice independently he may be able to catch up the odds and ends of business among his neighbors, but he will find that the more substantial business is directed to specialists. Should his best friend have an automobile accident he will find the defense of the case, which he might ordinarily expect to be engaged in, controlled by an insurance policy and directed to a defense specialist. Should his friend desire to make a will he is very likely to find that he is directed to a bank's attorney who is recommended as being a specialist in estate matters. Should one of his friends be engaged in controversy about his business he is quite likely to find that the trade association, of which he is a member, supplies specialized legal services.

And should the young man whom the State has equipped to practice law seek a clerkship he is in an equally difficult position.

Sometime ago a poem appeared in the New York Law Journal, which seems to perfectly portray the immediate prospects of a majority of young graduates.

HELP WANTED

A law firm commanding
Position of standing
 Requires a general clerk -
A man who's admitted
To practice and fitted
 To handle diversified work.

Must form corporations,
And hold consultations
 Assuming a dignified mien;
Should real add decisions
And legal provisions,
 Wherever the same may be seen.

Must have a sound basis
In all kinds of cases;
 Should never be idle or slow;
Must manifest learning
In all things concerning
 The matters referred to below:

Estoppels, restrictions,
Constructive evictions,
 Agreements implied and express;
Accounting, partitions,
Estates and commissions,
 Incumbrances, fraud and duress.

Above are essentials;
The best of credentials
 Required - and handsome physique
Make prompt application;
Will pay compensation
 Of seventeen dollars a week.

There is no basis for discouraging a well qualified young man from entering the law. There is ever a search for those who combine youth with intelligence, training, character and willingness to assume responsibility.

The fact however that among those who fail to meet the specifications, the competition at the bar is more deadly than ever before, means a lowering of average standards. There is a distinct relation of cause and effect between arrears of office rent and doubtful ethics. There is an astonishing number of lawyers today who labor under great economic pressure.

This tendency to demoralize the general practitioners and to create a bar of specialists has an effect upon the judiciary. No person who rightly appreciates the advantages of the division of labor will deny an important place in an advisory and consultive way to the specialist, but his seat is not the seat of judgment. That seat calls for a breadth of view and understanding which may not be so deep as the specialist's, but must be broader.

We have too blindly accepted the belief that we are governed by laws, not by men. This belief is dangerous without an appreciation of its limitations. The abstract law means very little for good or ill of the individual until it is made concrete in a judgment rendered by a court, and the kind of judgment one gets depends quite as much upon the kind of judge as upon the kind of law.

Some interesting statistics were published some years ago, showing the effect of the personality of the judge upon his judgments.

The study was made of the lower criminal courts in the City of New York where the number of cases of one kind before the several judges was large enough to admit of statistical treatment. The study was made from 1914 to 1916.

Of persons arrested for intoxication, one judge found 546 guilty, or about 97% of those who appeared before him, and gave an unconditional discharge in only one case. Another judge sitting at the same time in another part, out of 675 arraigned for the same offense, found 531 not guilty, or about 79%.

On disorderly conduct arraignments, one judge discharged 18% and another 54% of the prisoners. Vagrancy charges ranged from 4% to 79% of convictions, before different judges.

In making the penalty effective, one judge fined 84% of those convicted and suspended cases in 7% of the cases, while another one imposed fines in 34% of the cases and suspended sentences in 59%. It was not suggested that the judges involved differed greatly in integrity or competence. Of course this class of cases, in mass production form, is more likely to reflect individual temperament of the judge than would be true of different types of cases and different degree of concentration.

We all know, however, that the individual experiences, training and inclinations of the judge do influence decisions, and in the larger cities much strife develops where there is a choice of judges as to the particular judge before whom a case shall be tried. We all know the difference in attitude likely to be found on the bench between the

ex-prosecutor and ex-defense lawyer, and between the ex-plaintiff's lawyer and former defense lawyer in negligence cases. These differences reflect no necessary difference of integrity.

We find that justice is a very personal thing, reflecting the temperament, personality, education, environment and personal bias of the very human being on the bench.

Chancellor Kent in a private letter once revealed his method of decision, and I suspect gave a pretty accurate picture of the method pursued by most judges. He said,

> "I first make myself master of the facts," then "I see where justice lay and the moral sense decided the court half the time; I then sat down to search the authorities. I might once in a while be embarrassed by a technical rule, but I almost always found principles suited to my view of the case."

This of course was the judicial process as applied in the higher courts of appeal. The process as applied in Justice Court was explained in an early case by the New York Court of Appeals where the opinion in sustaining a decision of the rural Justice of the Peace said, in substance, that there was no reason for disturbing the findings of the Justice who had taken the full time allowed by law for his deliberations and had been aided, no doubt, by consultation with most of his neighbors.

The judiciary and the legal profession have made great contributions to the underlying principles upon which orderly society moves. To my mind, the greatest contribution which the bar and judiciary have made to our social well being is the emphasis of the principle of trusteeship.

If I may venture to diagnose the ills which afflict us at the present time, I would borrow the restrained and judicial statement of Mr. Justice Stone in the Harvard Law Review for November, 1934:

> "I venture to assert that when the history of the financial era which has just drawn to a close comes to be written, most of its mistakes and its major faults will be ascribed to the failure to observe the fiduciary principle, the precept as old as holy writ, that 'a man cannot serve two masters.' More than a century ago equity gave a hospitable reception to that principle and the common law was not slow to follow in giving it recognition. No thinking man can believe that an economy built upon a business foundation can permanently endure without some loyalty to that principle. The separation of ownership from management, the development of the corporate structure so as to vest in small groups control over the resources of great numbers of small and uninformed investors, make imperative a fresh and active devotion to that principle if the modern world of business is to perform its proper function. Yet those who serve nominally as trustees, but relieved, by clever legal devices, from the obligation to protect those whose interests they purport to represent, corporate officers and directors who award to themselves huge bonuses from corporate funds without the assent or even the knowledge of their stockholders, reorganization committees created to serve interests of others than those whose securities they control, financial institutions which, in the infinite variety of their operations, consider only last, if at all, the interests of those whose funds they command, suggest how far we have ignored the necessary implications of that principle. The loss and suffering inflicted on individuals, the harm done to a social order founded upon business and dependent upon its integrity, are incalculable."

It is my firm conviction that if modern enterprise does not adopt and observe the fiduciary principle it invites self-destruction. Wherever there is a superiority on one hand and a dependence on the other, the principles of trusteeship must be accepted. The fidelity of lawyer to

client, doctor to patient and confessor to penitent must be applied in other relationships such as banker to depositor, broker to customer, corporation executive to stockholder and employer to employee.

If this relationship is to penetrate the business world, it must be introduced by a judiciary alert to apply it and a bar alert to insist upon it, not merely with its adversaries but with its own clients. A lawyer has no right to be a crumbling servant. As an officer of the court, lawyers have a right to direct the affairs in which their services are engaged. Religious, social and economic leaders can preach the value of the fiduciary relationship, but it is a lawyer who acts as midwife in the birth of every scheme that violates the principle and who is in a position to bring the practical application of trusteeship responsibility into business life. The bar has imposed upon itself drastic disabilities in requiring untempted devotion to its clients. The limitations that we, knowing our frailties, have taken upon ourselves must be imposed upon all who are in positions where confidence is reposed or control over dependents is assumed.

I would not want to paint a depressing picture of the bar. Its function is too fundamental to be perishable. Education at the bar gives a man so different a mental starting point, furnishes him such a distinct chart for his thoughts that it is almost impossible to communicate between lawyer and layman as we may communicate with each other. Between lawyers and those lacking in legal background, there is often a barrier to

understanding which makes it almost impossible to communicate finer shades of meaning, which lawyers readily appreciate. It is in the company of each other that each of us is at his best, and all others are to a certain degree strangers. Lawyers, whether radical or reactionary, conservative or liberal, prosecutor or defense, prosperous or struggling, are as of one blood, while all outside the circle are strangers, and the spirit has been perfectly caught and expressed by Kipling.

The stranger within my gate,
He may be true or kind,
But he does not talk my talk
I can not feel his mind.
I see the face and the eyes and the mouth,
But not the soul behind.

The men of my own stock,
They may do ill or well,
But they tell the lies I am wanted to,
They are used to the lies I tell;
And we do not need interpreters
When we go to buy or sell.

Then men of my own stock,
Bitter, bad they may be,
But, at least, they hear the things I hear,
And see the things I see;
And whatever I think of them and their likes
They think of the likes of me.