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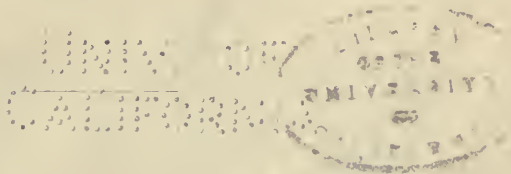


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THE SERVICE OF LAWYERS IN WAR-
TIME AND THEIR OBLIGATION
TO PROMOTE AMERICANISM

ADDRESS BY
THE HONORABLE WM. W. MORROW
JUDGE OF THE
UNITED STATES CIRCUIT COURT OF APPEALS
AT THE
ANNUAL SESSION OF THE CALIFORNIA BAR ASSOCIATION AT
SAN JOSE, CALIFORNIA, JUNE 7TH, 1918.



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The Service of Lawyers in Wartime and Their Obligation to Promote Americanism

**ADDRESS BY THE HONORABLE WM. W. MORROW,
JUDGE OF THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH JUDICIAL CIRCUIT,
AT SAN JOSE, ON FRIDAY, JUNE 7TH, 1918.**

Mr. Chairman, ladies and gentlemen: I wish to express at the outset my thanks for the very kind invitation extended to me to attend this session of the California Bar Association. I have found it a very pleasant and interesting session and the discussion of the legal subjects has certainly been most instructive. I desire, also, to thank the committee for having waived any obligation or duty on my part to bring with me a prepared address. Perhaps when I have concluded what I have to say you will not have for the committee the same kindly feeling I have for it on that account. But let me say, if you will forgive the committee and kindly and patiently bear with me, I will promise that if any of you have a case before the United States Circuit Court of Appeals during the coming year, and for any reason you do not come before us with a carefully prepared brief, if you will produce a certificate of membership in the State Bar Association and show that you were present on this occasion, I will see to it that your case is decided on the merits.

The Lawyers' War Services.

It occurred to me after I had received and accepted the invitation to be with you, that I ought to have at least some general idea of what I would say, and so I concluded that for the short time I am to detain you I would speak upon the subject of the services that are being rendered the government by the lawyers during this present war. My impulse to talk upon that subject arose partly from the fact that I had come in contact with such services, in one

way or another, in different departments of war services, and it seemed to me that I might very properly speak upon that subject as an impartial observer and without having to laboriously hunt through the books for authorities to support my conclusions.

I was at first quite pleased with this selection of a subject and the attractive ease it promised, until last Wednesday evening, when I attended a meeting of the San Francisco Bar Association and listened to a very entertaining, able and eloquent address by Judge Lindley upon this identical subject, and as it was treated by the Judge in a way so entertainingly and so much superior to anything I could say or even attempt to say, I thought for a while I would have to turn to some other theme and avoid the obvious contrast. But after reflection it occurred to me that Judge Lindley had spoken from a standpoint of an actual worker, a patriotic and earnest worker, as the legal adviser of a department of the government at Washington, and that his point of view or angle of observation was from the top downward, whereas mine was from the bottom upward, that is to say, from the place where the services are being rendered by the lawyers in the various local communities in aid of the national administration at Washington, and that the subject might have some interest from that point of view. I have accordingly determined to talk to you upon that subject and I shall also appeal to you for a still further, and I think an equally patriotic, service.

The Selective Draft.

Now, in order that you may understand the particular point of view to which I am directing your attention, let me say that when the President of the United States, under the Act of May, 1917, called for the services of members of the legal profession to aid those who were to be called into the service by the Selective Draft, he did so that, while the law was being administered summarily, it might be administered wisely, and justly, as well as promptly, and in such a way as to enable those selected to respond intelligently and without delay to the call of their country. The call made by the President was almost a command: "I urge men of the legal profession," he said, "to offer themselves as associate members of the Legal Advisory Board

to be provided in each community for the purpose of advising registrants of their rights and obligations and of assisting them in the preparation of their answers to the questions which all men subject to draft are required to submit." In response to that invitation, or call, the lawyers all over the country, in California, as well as elsewhere, responded freely and voluntarily to the government in aid of the registrants in making out their returns.

It was a splendid program and a patriotic service, not only for the men selected, but for the government in a great and unparalleled emergency.

Now, you gentlemen know that the Selective Draft raised a great many important and delicate questions concerning exemptions and liabilities under the law. These questions had to be passed upon first by the Local Boards and then in some cases by the District Board of Appeals, then, if for any reason, the individual was dissatisfied with this final decision and believed he had been unjustly treated by the Boards, he came to the Federal Court, not by an appeal from the decision of the Appellate Board, for the decision of the Appellate Board was made final by law, but upon a writ of *habeas corpus*, and this right of a final adjudication by a Federal Court was declared by a decision of the Supreme Court, rather curiously in a Chinese case (Chin Yow, 208 U. S. 8), where the Supreme Court determined that a person claiming a substantial right before an executive board or officer and a fair hearing is denied may appeal to the courts, notwithstanding the law provides that the decision of the board or officer is final.

Mr. Justice Holmes, in his remarkably succinct way of expressing the opinion of the Supreme Court, said, in substance, in the case referred to: "The decision of the department is final, but that is upon the presupposition that the decision was after a hearing in good faith, and as between the substantive right of a citizen to prove his right on the one side and the conclusiveness of a decision of an officer or board on the other, one or the other must give way and something must be done and it naturally falls to the courts to do it."

Now, under this decision a number of cases were brought before the Federal Courts on writs of *habeas corpus* in this state and elsewhere, on the claim that a full

and fair hearing had been denied to the individual, but after a careful investigation, we found that in not a single case had such hearing been denied, that is to say, the Appellate Boards had been so well advised by the Legal Advisory Boards that no arbitrary ruling appears to have been made or injustice done in a single case, and this was largely, if not wholly due to the careful advice given by the lawyers of the Legal Advisory Boards, who rendered such services freely and voluntarily. This was certainly so in this jurisdiction and, judging from the advance sheets of the decisions in other jurisdictions, it was so all over the United States.

The Liberty Loans.

The lawyers were also called into the service of the government in promoting the Liberty Loan drives and with these services in this state I was somewhat familiar. I undertook some work in that line myself and everywhere I found the lawyers, particularly the young lawyers, were rendering able and efficient service. Their legal training gave them the skill in presenting the claim of the government in the strongest possible light and, let me add, in the briefest possible way, and results show that their appeals went home to the people in every community, drawing therefrom their accumulated savings to support the war.

The American Red Cross.

Then there was the American Red Cross with its appeal for a generous support and patriotic services from all classes. This call was also responded to by the lawyers, whether young and enthusiastic, like some of you, or advanced in years, but determined to see it through, like some of the rest of us, and the result of this appeal for stricken humanity has surprised us all and astounded the world.

The Lawyers at the Front.

Then there are the lawyers who have gone directly to the front and into the trenches. They are numerous, we all know many and they are known in every community for their bravery and their enthusiasm to serve their country in the cause of freedom and against a vicious, savage and monstrous autoeracy. Now, this is a fine record for the

legal profession to make, and being somewhat familiar with all these splendid services, I thought I might come here and say a few words in their behalf, and under the general theme of patriotism pay a deserved tribute to those of our class who have responded to that call, but before doing so, it seemed prudent for me to be sure that I was not overestimating the extent of such services, for you know the profession has not escaped serious criticism. It has been said that as a class lawyers are selfish; that they are more concerned about their own personal interests than the general welfare; that they only accept public employment when it promises better returns than the private service, and that their patriotism is generally measured by some sort of sordid considerations. In other words, the charge is that when they support a cause it is for the fees or other rewards there are in it.

The Tribute Paid the Lawyers by the Provost Marshal General in the Selective Draft.

It was, therefore, with some concern that I cast about for substantial evidence as to the real status of the lawyers in this great conflict. In pursuit of this evidence, I first applied to General Crowder, whom I have known during the past twenty years in a personal as well as in an official way. I asked him by telegram what services, if any, the lawyers of the country were rendering the government in this war. The question permitted a general reply that the lawyers, like all other classes, were rendering full and faithful service to the government. But a reply came and it went so fully and fairly into all of the details of the service that I thought I ought to submit it to you for your information and in justification of my confidence in the profession.

This is General Crowder's reply:

“Replying to your telegram concerning services of lawyers to the nation in this emergency, I submit the following: More than three thousand lawyers of high standing, whose incomes exceed by many times the compensation allowed, have tendered their services to me as Judge Advocate General. I have been able up to this time to avail myself of the services of one hundred and fifty commissioned in the Judge Advocate General's Department,

some of whom declined to accept salaries. Of the forty-six hundred and sixty-three local boards and one hundred and fifty district boards, the average is higher than one lawyer on each board. There are nearly five thousand Legal Advisory Boards, each consisting of three permanent members, a personnel of nearly fifteen thousand. Attached to these Legal Advisory Boards are associate members aggregating nearly one hundred thousand lawyers." And remember, gentlemen, the number of active lawyers in the United States is only about 125,000. General Crowder, therefore, states, in effect, that more than two-thirds of the lawyers in the United States have given their services to the government. But here is what I want to call your particular attention to: "I do not," says General Crowder, "hesitate to say from my own observation, and from reports which have been received from the states, that the expeditious classification of registrants could not have been accomplished without the unstinted aid which the lawyers of the country rendered through the medium of Legal Advisory Boards." General Crowder goes on to say: "I quote briefly from the report of one Governor, rendered about two months ago, which is typical: 'The valuable aid and services rendered to both the War Department and the registrants by the State Bar Association and individual lawyers cannot be passed unnoticed. Hundreds of organized bureaus where registrants could have their questionnaires filled out, receive legal and other aid without cost or expense to registrants or to the government, were maintained by competent men, and every registrant was given the most patient and courteous consideration.'"

Now listen to this tribute in the conclusion of General Crowder's telegram: "I cannot find language sufficiently expressive or appreciative of the value which the lawyers, as individuals and through their organizations, have rendered and are still rendering."

What Governor James K. Lynch Has to Say About the Lawyers in the Liberty Loan Drives.

Now, what is the evidence as to the services of the lawyers in the Liberty Loan drives? I have the pleasure of knowing Governor Lynch of the Federal Reserve Board of this district, and I asked him what services, if any, the

lawyers had rendered the government in the Liberty Loan drives. His reply was: "They rendered splendid services all over the districts and it was real, substantial service, rendered voluntarily and freely, giving their time and knowledge without compensation, and they travelled at their own expense throughout the state." I said: "Do you mind saying so to me in a letter I can read to the Bar Association?" He said: "I will do that with pleasure." And I am now going to read to you a letter that I received from Governor Lynch about the services of the lawyers in the way of assisting in placing the Liberty Loans before the people:

"I hear that you are going to address the Bar Association upon the share taken by the attorneys of the country in placing the Liberty Loans of the United States.

"From my personal experience, I can say that they did most effective work and were one of the really important factors in placing the loans. Not only did they contribute largely from their own means, but they gave liberally of their time, and, through their influence, were a most important factor in forming public sentiment and in awakening the country to its danger and to the need of subscribing.

"In connection with the campaign for public speaking they naturally took the lead and in every community gave untiringly of their time and strength. Mr. Allen Chiekering, chairman of the speakers' committee, has given a large portion of his time for more than a year to this work, and as he has enlisted for the duration of the war, there is no telling when he will be discharged.

"It is needless to say that all this work of the legal profession was entirely without compensation of any kind, and forms a splendid contribution to the service of the government."

What the Governor of the State Has to Say About the Lawyers in the Selective Draft.

The Governor of the state has, of course, jurisdiction and charge over the Selective Draft in the state, and I accordingly applied to him for information upon the subject, and mind you, in all these instances I have never in terms solicited a complimentary report, but have simply asked: "What have you to say as to the services of the

lawyers of the state in support of these war measures?" and I may say that one of the reasons I had for asking this question was because I had heard it said that the lawyers were not doing their duty; that they were not serving their country as they should; but instead they were still presenting trivial technicalities in courts delaying the administration of justice, as they have always done, and that as a class they were obstructive rather than constructive in a great national cause. I had heard this over and over again and I was very much interested in finding out whether, in a situation like the present, with the whole country aroused and alive to the perils that are now menacing the cause of law and liberty, the lawyers were doing their duty and serving their country faithfully and fearlessly, or whether they were standing back, and relying upon some trivial and selfish excuse for a lack of interest in the national cause. And here is what the Governor said in his letter:

"Replying to your inquiry, I am glad to have an opportunity to express my appreciation of what the lawyers have done in California in connection with the execution of the Selective Service Law.

"In every county of the state a Legal Advisory Board has been created. These consist of a Judge of the Superior Court and two lawyers. These boards were chosen by a committee appointed by myself at the suggestion of the Provost Marshal General, consisting of Attorney-General Webb, Oscar C. Mueller, the president of the State Bar Association, A. E. Bolton, and Chas. S. Cushing. Mr. Frank Short and Isador Dockweiler were also designated on the committee. All of these gentlemen were named at the suggestion of the Provost Marshal General on account of their connection, either present or past, with state or national bar associations. Each Legal Advisory Board in turn, appointed a board larger in number to render services to the various local exemption boards, the plan being that each local exemption board should have in constant session a board of lawyers, versed in the Selective Service Law, ready to give advice to registrants in the filling out of their questionnaires. There are 125 local boards in the state. That would mean that there were at least 625 lawyers throughout the state who were ready at all times to render free service to the drafted men. I feel that their

work has been of the greatest benefit to the nation in the successful execution of the draft act.

“There has been attached to each local board throughout the state a lawyer as government appeal agent, whose duty has been to carry appeals on decisions of the local boards to the district boards, these appeals being in behalf of the government. To these men has fallen the duty of investigating all cases called to their attention wherein the decision of the local board is alleged to have been improper. They have also been obliged in many instances, and particularly in the first draft, to advise registrants as to their rights and their liabilities. Their services have been entirely gratuitous and they have in many instances been forced to resist the importunities of their own clients. I feel that their services have also been of the greatest benefit.

“In addition to these men there is a lawyer on each of the five district exemption boards, and on many, if not the greater portion of the local boards, lawyers have been appointed. The duties that have been imposed on these boards by the government have been so many and so arduous that the members thereof have sacrificed much of their private affairs, and I know from personal knowledge that the lawyers on these boards have devoted themselves to that work to the detriment of their own practice.

“In short, I feel that the state of California is very greatly indebted to the work which the lawyers have done and are doing and as Governor of the state I feel that we ought to give them the highest praise. I am very glad of this opportunity to express through you my personal appreciation of the work they have done.”

The Lawyers in the American Red Cross Service.

I have already mentioned the services rendered by the lawyers in the American Red Cross organization. As an officer of the national organization and familiar with the work, I can testify to their enthusiasm and their skill and judgment in organizing and maintaining the Red Cross drives that we have had in this state, and in carrying forward the work here and in Europe. Much of the success—unparalleled success—in the Red Cross work is due to their services.

You can very well understand, gentlemen, that I have

been very proud of this evidence in behalf of the legal profession in this state. Judge Lindley was called to Washington. He has rendered splendid services to the government in a high office. Others specially qualified have been called to responsible stations, and if we had nothing else to our credit, we could very properly say that the lawyers of California have given to the government services that speak well for the profession and for the loyalty of the whole state, but here is a record that speaks for the entire profession in every community of the state in terms of the highest praise.

The Call for Still Further Services.

Now, we must keep this splendid service up to a full measure of efficiency. The lawyers must continue to be the right arm of the government in all this war work, but I am going to present to you the call for a still further service. I am going to ask you to consider what further duty you owe to the form of government under which we live. We have reached the point where we must know, and know with certainty, whether the people of the United States are or are not Americans in spirit as well as in name. We have reached a point where we must know whether the lawyers are willing to support law and order and in the administration of justice maintain the constitutional principles of an organized government.

I am going to appeal to you to go back to your several communities and let them know that you have assumed and taken upon yourselves an obligation to further support the government, not only in its war measures, but in maintaining a constitutional form of government pledged to the administration of law and order. Say to them that it is proposed to "Americanize America" and make it "safe for an active, intelligent and efficient democracy."

The President a Constitutional Dictator.

It was said yesterday that the President of the United States was a dictator. Professor McMurray, who said it, explained last evening that he did not mean anything in disparagement of the President or his administration. I was very glad to hear him say so, because I believe the President of the United States, in his war measures, has acted in accordance with his constitutional authority, and

if he is a dictator he is a constitutional dictator, that is to say, a dictator within the authority of law and the Constitution of the United States. But we want to be careful not to set up any other dictator, and particularly one not authorized by law.

The United States a Representative Democracy.

Now, I am going to call your attention to a feature of our form of government worth while remembering, and I want you to pay attention to this, as it has relation to the service I am going to ask of you for the future. The government of the United States has two fundamental principles involved in its essential form. First, it establishes a republic as a representative democracy, defined by President Lincoln, as was said a moment ago, as a "government of the people, by the people, and for the people." It sets up, as is well known, three different well balanced departments of government—legislative, executive and judicial—for the administration of its affairs. These departments are given the necessary power for the co-ordination and efficient administration of the government as a sovereign nation. Several of these powers might be enumerated as important in the present state of affairs, but only one need be mentioned now as particularly important in this present emergency, viz.: the power to make war. Our Constitution, as Mr. Justice Hughes says, is a "fighting Constitution." It gives Congress the power to declare war, to raise and support armies, to provide and maintain a navy, and to make rules for the government and regulation of the land and naval forces of the United States. The President is made Commander-in-Chief of the army and navy. Congress has authority to make all laws necessary and proper for carrying those powers into execution.

For what purpose were all these powers conferred upon the government? Was it that in a war for our own liberty and in defense of our own rights, we might be defeated? Manifestly not. No such limited power would be nor has been given. The power to make war was conferred upon the government in order that it might carry on a war successfully, not unsuccessfully, and that is what we are engaged in doing now. We are in a war and we are going to continue to be in the war until we secure a complete victory over our enemy. You will find if you look

over the Constitution of the United States and read it carefully, paragraph by paragraph, and one section with another, that it means this: that there is ample authority for declaring that every dollar of money and every ounce of man power that the people of the United States have or can command, are to be thrown into this war for the purpose of winning a complete and lasting victory for us and for our posterity. This is what the President of the United States is doing and what he has called upon us to help him to do in accordance with constitutional law. Some few have said that we have gone outside of the law and disregarded the rights of individuals and the Constitution has been thrown to the winds. Not a bit of it. Our Constitution is not a "scrap of paper" to be thrown to one side on any account or for any purpose. It is a Constitution to be enforced maintaining the liberties of the people in our domestic as well as in our foreign relations.

A Government Formed to Protect Individual Rights.

I said that we had one particular, essential fundamental element in our form of government, viz.: the form of a republic, as a representative democracy. And now, secondly, the Constitution secures certain rights and immunities designed to adjust and balance the governmental power of the republic with personal liberty. That is what the Constitution is for. It has just these two propositions: First, it forms a republic, and next, it provides for the protection of the people under that government in their individual rights. That is what the government of the United States was organized for, and you can reduce it all into a very small compass. These are the essential elements. And what I want to see is that the people of the United States, the young men, the native born as well as the foreign born, thoroughly understand what these essential principles of the Constitution are. Let me illustrate what I mean. In the proceedings relating to the naturalization of aliens, one of the inquires which the law provides shall be asked of the applicant is this: Is he attached to the principles of the Constitution of the United States? And he must prove that fact to the satisfaction of the court. and to do so he must bring two witnesses to court who shall make oath that they have known the applicant for at least five years and that during that time he has

behaved as a man of good moral character, and that, from what they know of him, they believe him to be attached to the principles of the Constitution and well disposed to the peace and good order of the same. For the purpose of ascertaining whether the applicant was intelligently attached to the principles of the Constitution, I have asked this question: "To what principles of the Constitution of the United States are you attached?" There have not been very many intelligent answers to that question. Some have said they came here to better their condition; that they wanted to secure better wages. In fact, they have given all sorts of answers, but there was one answer made to this question that I thought was very intelligent, although quite unexpected. I asked the applicant: "Tell me why are you attached to the principles of the Constitution of the United States, and to what particular principles of the Constitution of the United States are you attached?" After some hesitation he said: "Woodrow Wilson is President of the United States." That produced some amusement in the courtroom. The audience seemed to think this an amusing answer to make in defining a principle of the Constitution to which the applicant was attached, but it was, in fact, a correct answer, as far as it went, and why? Because Woodrow Wilson was elected President of the United States by the people under the provisions of the Constitution. He had not become President or a ruler because his father was either a king or a kaiser, and this was undoubtedly what the applicant meant.

Now, what I would like to see is this: I would like to see every person who comes to the court as an applicant for citizenship to be able to say what the essential principles of the Constitution of the United States are and why he is attached to them, and I would like to see our native born young men who come to be registered as voters, to be able to state in the same way and to the same effect the essential principles of the Constitution of the United States and why they are attached to them. Why not? Are they not the most important elements in an education that any young man can have? And ought we not all to be so educated? You know, we expect all our young men, especially since Judge Short's address, to be familiar with the Ten Commandments. And while we honor these Com-

mandments, and many of us have been required to commit them to memory, as the fundamental law of mankind, we ought to be able to name with equal fluency and intelligence the essential principles of the Constitution of the United States. We ought to be able to enumerate these as we do the Ten Commandments or the Lord's Prayer or the Litany of the church to which we belong or any of those other great inspiring moral principles that constitute the frame work of Christian civilization.

If an American citizen, whether native born or naturalized, is asked: "What are the principles of our form of government to which you are attached?" he ought to be able to stand up and with ready voice and memory state them something like this:

"I am attached to the principles of the Constitution of the United States because it establishes a representative democratic form of government and because it secures to the citizen certain rights and immunities consistent with the administration of that form of government and in the interest of personal liberty and justice and because it provides specifically for all time a bill of personal rights that:

"No law shall be made by Congress prohibiting the free exercise of religion, or abridging the freedom of speech or of the press. The privilege of the writ of *habeas corpus* shall not be suspended, except in case of rebellion or invasion. No bill of attainder or *ex post facto* law shall be passed. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated. No person shall be subject for the same offense to be twice put in jeopardy of life or limb; nor be compelled in any criminal case to be a witness against himself. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have assistance of counsel for his defense. Excessive bail shall not be required, nor excessive bonds imposed, nor cruel or unusual punishment inflicted. No person shall be deprived of life, liberty or property without due process of law, nor be denied

the equal protection of the law, nor shall private property be taken for public use without just compensation.

These are the great principles of government that the Anglo-Saxon race has secured after more than 600 years of struggle and we ought to be as familiar with them in all their form and significance as we are with the names of the days of the week or the month.

The Americanization of America.

This is the call I submit to you: An organization is about to be formed in this country for the purpose of maintaining these essential principles of government. It is proposed to "Americanize America." We have come to realize the absolute necessity of everybody, whether young or old, naturalized or native born, understanding distinctly what they mean when they declare themselves in favor of the constitutional form of government under which they live, and their full measure of loyalty when they say they reverence the flag and will follow it in the service of the country wherever it may lead. They should know what that means in the cause of civilization, and what it means to have our soldiers in France bravely upholding the principles of international law, and what it means to have courts of justice at home enforcing our own domestic laws.

The question is often asked: "What should the local, state and national bar associations do to make such organizations efficient and popular with the members of the bar and at the same time command the respect and confidence of the public?" My answer to that question is: "Make the organizations represent, above all else, the true American spirit and devotion to the great principles of right and justice." That is what our soldiers are fighting for in France today and when we say we must do everything to win the war, we must understand what it means to win the war. Does it not mean in the final analysis that there must be obedience to the law and punishment for the outlaw? Does it not mean that we are in this war to save a civilization based upon the eternal principles of right and justice? And if we are in the war for that purpose in dealing with other nations, it is equally important that we should have that purpose firmly established and always in view in dealing with ourselves.

You have heard these great principles of right and justice stated by the speakers who have addressed you at this meeting and particularly by the president of the American Bar Association this morning. We were all delighted with that address. Coming from Philadelphia, it came with the ring of the old Constitution and its guarantees for civil liberty and the protection of individual rights. I regret I did not hear Judge Short's address yesterday, but the press comment shows that he was, as usual, historical and eloquent, as he was forceful and interesting in dealing with this subject.

Now, what have we learned from all this discussion? Is it not that if the world is to be saved from an overpowering militarism on the one hand, or crushing anarchy on the other, it must be done with a vision broad enough to include the rights of the individual whether at home or abroad? There must be an aroused American spirit resolved that America must be Americanized so that we shall all understand the true value and purpose of citizenship and be prepared to discharge its duties in maintaining the principles of free government. In this cause I am sure the lawyers will be as loyal and true in the future as they have been in the past, and that they will be among the leaders in giving the public will a true, consistent and patriotic direction.

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