

THE CENTENNIAL OF THE BAR ASSOCIATION OF SAN FRANCISCO

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This occasion is supposed to be a celebration of the Centennial of the Bar Association. I have never felt that an address -- and particularly a solemn address -- is a very good vehicle for celebrating anything. Much more appropriate, I think, will be what you are to see and hear after you have suffered -- not too much, I hope -- what I am about to say. But the Centennial Commission overruled my views.

The next question I had to face was: Why me? It occurs to me that perhaps it is because the two distinguished lawyers with whom I began the practice of law almost forty years ago, O. K. and Charles Cushing, were both born well before our Association was founded. Thus, with them, I represent the whole hundred years of the life of the Association. There are, however, many others here tonight who are in a comparable position. Finally, when I looked at the advance proofs of Ken Johnson's book, "The First One Hundred Years of the Bar Association of San Francisco," I found what I believe to be the true explanation. I quote:

"In 1926 the firm then known as Morrison, Hohfeld, Shuman & Clark, in memory of its early partner, Alexander F. Morrison, created in his name

a fund to pay for a speaker of note who would address the annual meeting of the Association which was the immediate beneficiary. In 1930 the directors came to the conclusion that, possibly because of its limited membership, the Association was having difficulties in securing speakers of the caliber desired. . . ."

Think how much more difficult it was for the Association to obtain a speaker for this occasion; it had nothing with which to "pay for" a speaker! So I was invited!

Having found the explanation for the invitation to speak, I next decided to heed the example of one of Fielding's heroines, about whom he said: "He leapt upon her, and would have deprived her of her virtue, had she not saved herself by gracefully yielding." So here I am, and there you are. Let us proceed together.

On such an occasion as this, we should look both forward and backward. It is easier, however, to look backward. What's to come, in Shakespeare's phrase, is still unsure. In theory at least, what has happened is known. Yet I wonder if that is really so. I find that the younger members of our Association with whom I have talked really have no notion of what San Francisco was like, or the practice of law was like, much less of what the

Association was like, in the 1920's or 1930's, when many who are here tonight began the practice of law.

How much more difficult must it be, then, for any of us to imagine our City, or the practice of law here, one hundred years ago. I remind you, again in Ken Johnson's words, that "Eighteen seventy-two was a different world; the trans-continental railroad was only four years old and there were no electric lights, automobiles, radio, television, law schools or Superior Courts. Typewriters were also yet to come, and the scrivener was still an important person in the law office. Printing was, of course, available and this explains the existence today of printed briefs in the trial courts from those days. If a lawyer had a client of means and wanted to impress the court he would have his briefs printed." A printed brief in my court is a rarity today.

During the eight years of the 1870's after the founding of our Association, a number of things that we now take for granted had their beginning. In 1872, the first four of our Codes were enacted, to be effective January 1, 1873 -- the Civil, Penal, and Political Codes, and the Code of Civil Procedure. They were still the only Codes over 60 years later, when I began the practice

of law. In 1872, construction of a new City Hall, on the site of the present one, began. It did not last so long. It collapsed in the 1906 quake, and a scandal arose because of its shoddy construction. Hastings College of the Law began in 1878; it was the State's only law school. In 1879, our present rather dreadful Constitution was adopted. It created our Superior Courts. And in 1879, the State got its first woman lawyer, Clara Shortridge Foltz of San Jose.

I suggest to you that it is not only between the younger and older generations of the present that there is a "communications gap." The gap between us and the founders of our Association is much more profound. I am reminded of the computer programmers who thought that they had the machine programmed to translate English into Russian and Russian into English. They summoned the press for a demonstration, and asked for suggestions of something to translate. Someone suggested, "The spirit is willing, but the flesh is weak." This was duly fed into the computer, and out came a tape bearing a sentence in Russian that nobody could read. Back it went into the computer, to be retranslated into English, and here is what came out: "The liquor is still good, but the meat has gone bad."

Nevertheless, let us try to look back across the gap to our beginnings. A little over 100 years ago, a younger lawyer named Pierson, impressed by what the lawyers of New York City had done two years before, when the Bar Association of the City of New York began, sent out a notice to members of the San Francisco bar reading in part as follows:

"The need of more intimate and friendly association among the leading and respectable members of the Bar of San Francisco has long been felt in this community. We have in this city about four hundred lawyers, most of whom are only known to each other by name and sight. Among them are some of the choicest minds in the country, possessing the highest qualifications for social enjoyment. A few only are chargeable with the faults that are commonly made the characteristics of the profession, and it is to deprive these few from attaching their individuality to the general character of all that an association is greatly needed. The benefits of club life in leisure time cannot be overestimated, when encouraged under the influence of an elevating organization, the objects of which are not simply enjoyment of the present moment, but principally co-operation in sustaining the common credit and reputation, and the promotion of friendly relations."

In response, three leading lawyers, McAllister, whose statue stands outside the City Hall facing the street named for him, Hoge, and Wilson, met with Pierson at the Bank Exchange Bar in the old Montgomery Block, approximately where the Transamerica Pyramid is now rising, and our Association was formed. The Articles of Association of the New York Association were borrowed with few changes. Article I gives the flavor. "The Association is established to maintain the honor and dignity of the profession of the law, to increase its usefulness in promoting the due administration of justice, and to cultivate social intercourse among its members."

The last phrase is the key to the nature of the Association during its first thirty years. Dues were high -- far higher in terms of real dollars than those of today. Membership was by invitation; it included most of the leading lawyers, but never more than 25 per cent of the practicing bar.

One of the first things done was to procure club rooms. Here is a contemporary description of them:

"For the use of the Association, the Club rooms formerly occupied by the Pacific Club, have been refitted and furnished in an elegant manner. These rooms comprise the entire second floor of the building No. 634 Sacramento Street, between

Montgomery and Kearny, and also three smaller apartments on the third floor. There is an entrance from both Sacramento and Commercial Streets. Windows at each end and a large skylight, extending through the third floor to the roof above, afford ample light. The gas fixtures are complete, neat and elegant. The main floor is thrown open into one large hall from end to end by means of folding doors. It is divided into five large continuous saloons, in all one hundred and twenty feet long by twenty-two feet wide; two smaller side apartments and a long passageway. The furniture, though not yet complete, is amply sufficient, and has been carefully selected. The carpets are of fine quality throughout. The walls are delicately tinted, and the ceilings frescoed in good taste so as to preserve the general harmony of appearance - the "tout ensemble" being warm and inviting and pleasing to the eye.

The central saloon immediately under the skylight is provided with two fine billiard tables. At the end facing Commercial Street there is a table and sideboard, where liquors and cold lunch are always ready, and where between the hours of

noon and two p.m. hot lunch is provided by the steward.

When the pictures that are promised, and to be promised, are all hung on the walls, the effect of ornamentation will greatly heighten the effect of the general appearance."

There is no doubt that members of the Association played leading roles in most of the great events in San Francisco of the last part of the 19th Century. But they played those roles as individuals, precisely because they were leaders. So far as one can tell, the Association, as such, took no part. It began as, and it remained for many years, an elite social club, its membership restricted, its activities other than social almost non-existent. It was, par excellence, a part of the establishment of the day.

We should not, however, be critical. The day of big government was yet to come; the civil rights movement was dormant; women's lib, except the movement for women's suffrage, did not exist. The enormous technological changes that have produced our current civilization had just begun to make themselves felt. Two world wars were yet to come. There was no overcrowding in California. One could still go to the S.P. depot in Pasadena, ask for a ticket to The City, and get a ticket to San Francisco.

At the turn of the Century, ours was an optimistic, expansionist, laissez-faire society, and the Association reflected that fact.

The change of the Association from a social club to a professional association, active in behalf of the profession and of the public, began in 1901, when the first Warren Olney assumed the presidency. Let me sketch some of the major changes. They came gradually, but also at an accelerating pace. They reflect great credit on our profession -- and particularly on the Bar Association of San Francisco. We can be proud of our history.

The first change, in 1901, was internal, but it was a necessary predicate, the democratizing of the Association, for what was to follow.

The constitution was amended so as to abolish the initiation fee and reduce monthly dues to \$1.00 for those who had been admitted to the Bar for ten years or less and to \$2.50 for those admitted for a longer period. An active drive for new members was initiated and membership rose to over five hundred - more than twice what it had ever been before.

The first important step that the Association took to improve the administration of justice was to remedy the acute congestion which confronted the Supreme Court.

In a different form, that problem is again with us today, as the Chief Justice can tell you. The remedy was the creation of the District Courts of Appeal. It was promoted by the Association, in cooperation with the Los Angeles Bar Association. Our Association named an ad hoc committee to persuade the Legislature. These efforts were eventually successful as in 1903 the Legislature enacted a constitutional amendment creating the District Courts of Appeal. The proposal was approved by the people, and the Courts began operation in April 1905.

In the fall of 1906 the Association adopted a policy, which has continued to this day, of taking a poll of its members for the purpose of selecting a candidate for judicial office who would receive the public endorsement of the Association.

In 1910, there were twelve departments of the Superior Court in San Francisco, but the backlog of cases remained very high. Because of this the Association caused to be introduced, and lobbied strongly for, a bill to increase the Superior Court departments to sixteen. The bill was passed by both the Senate and Assembly; however, much to the surprise of his old comrades of the Bar in San Francisco, Governor Johnson

vetoed the bill. In brief he said, judges should work harder. I seem to remember hearing similar sentiments expressed quite recently.

In the same year, under the presidency of Curtis H. Lindlev, a committee was appointed to draft a Code of Ethics. The committee members were Charles S. Wheeler, chairman; Warren Olney, Jr.; A. C. Freeman; Charles A. Shurtleff; and Grover O'Connor. The committee held a good many meetings and in October of the same year presented a complete code to the Association. It was unanimously adopted by the Association on October 14, 1910. It is a truly remarkable document, worthy of the most thoughtful consideration today.

During Lindlev's presidency, a statewide Bar Association was created. There had been an earlier attempt to create one, in 1889. However, it had but two meetings and then quietly died.

The earlier organizations were basically composed of individuals; Lindlev was of the opinion that membership should be by local city or county associations which at this time had been formed in a good many communities. Lindlev was a careful planner

and letters were sent to all local associations. The result was a meeting in San Francisco attended by sixty-eight delegates from twenty-seven cities or counties. The delegates from the Association were Curtis H. Lindley, Charles S. Wheeler, Warren Olney, Jr., Jesse W. Lilienthal, O. K. Cushing, E. A. Belcher, William Denman, Grant H. Smith, and Emil Pohli. Pohli opened the meeting and Lindley was temporary chairman. Out of this meeting came the California Bar Association, which continued to flourish until it became the State Bar of California.

Next, in 1915-16, came the Legal Aid Society. A year or two prior to 1915 the Legislature had created what was known as the State Commission of Immigration and Housing, and a portion of the act provided that steps should be taken to provide legal assistance to those who needed it but could not pay for it. Here is an ancestor of OEO legal services. In 1915 George L. Bell, an attorney, was executive secretary of the Commission, and took the first positive steps to implement these provisions of the act. He appealed to the Association for assistance and President Lilienthal named the following to attend a preliminary meeting in the chambers of Justice Frank H. Kerrigan, also a member of the Association:

O. K. Cushing, John F. Davis, Harry Gottesfeld,
Walter Perry Johnson, A. M. Kidd, and Warren Olney, Jr.
There were several subsequent meetings, and the San
Francisco Legal Aid Society came into existence at
a meeting held on March 10, 1916. O. K. Cushing was
elected president along with the following officers:
Walter Perry Johnson, vice president; George L. Bell,
secretary; and Dean Frederic C. Woodward of Stanford
University, treasurer. The first general attorney was
Alden Ames, succeeded in June 1917 by William E. Billings,
both members of the Association. ^{Legal Aid} The/Society continues
to this day.

We can see the pace of pro-bono publico work
picking up. However, it was interrupted by World War I
and again by World War II.

Between the wars, however, and largely as a
result of devoted work by members of our Association
and the Los Angeles Association, the State Bar was
created. The Act passed the Legislature in 1925,
but was vetoed by Governor Richardson. Reintroduced
in 1927, it was again passed, and was signed by
Governor Young. Ever since then, our Association has
worked cooperatively with the State Bar. In my opinion,

one of its greatest contributions to the State Bar has been in the Conference of Bar Delegates, where legislation to improve the administration of justice is debated. Our delegation has played a major and constructive role in the Conference, and much excellent legislation has been the result.

In 1926, we helped to create the Judicial Council. In 1929, we helped to create the Municipal Courts in San Francisco.

In 1927, largely through the efforts of three young lawyers, Stanley A. Weigel, Matthew O. Tobriner, and my brother, John C. Duniway, the Barristers Club was created, with my brother as its first president.

In the 1930's, some Stanford Law alumni began holding Continuing Education courses in San Francisco for practicing lawyers. This was soon taken over by the Association. Now it is sponsored by the State Bar and the University of California Extension, and has become the largest and most successful effort of this kind in the nation.

I could continue listing activities and accomplishments, but I will not. Most of the things that the Association has undertaken since World War II,

and that it is doing today, are familiar to this audience.

Earlier, I mentioned the Code of Ethics, adopted in 1910. In some ways, it gives one the feeling that there is nothing new under the sun. In a lengthy preface, the committee gave reasons for adoption of the Code. Here are some of them, which I quote:

"The Bar is reminded that the President of the United States has declared . . . that the administration of the criminal law is a disgrace to our institutions. . . .

There is a growing lack of confidence in the impartiality and integrity of the judiciary.

The jury system has acquired the disrespect and the distrust of a very large body of our citizens.

Many hold that our system of instructing juries on questions of law approaches the absurd; that . . . jurors are called upon to listen to the reading of many pages of instructions . . . which no sane person believes are understood . . . by the jurors, and which . . . are a frequent source of reversal, retrial, expense, and delay.

One hears . . . that the law's delays . . . amount to a denial of justice . . . are unnecessary, and are . . . brought about by the apathy of the Bench and Bar.

. . . that the Bar is overrun with dishonest lawyers, and unprincipled pettifoggers. . . .

. . . that the Bar is too indifferent to its own honor to bring about the disbarment of those who have disgraced the profession; that it is too selfish . . . to perform the duties morally resting on it as a body; that it is too cowardly . . . to call to account a judge it may know to be shirking . . . his judicial duties, or . . . bringing his high office into disrepute; that the Bar does not uphold the courts against . . . unjust assault, . . . and, generally, that in matters calling for character, independence of action, moral courage, and professional self-respect, it is shockingly deficient."

I daresay that every lawyer or judge present has heard some of these same criticisms leveled at the Bar and the Bench of today. But today we can point to a host of things that the Bar has done and is doing to eliminate or minimize the basis for such criticisms.

We are a part of a growing, dynamic, active Association, devoted to the welfare of the profession, of the administration of justice, and of the public. I predict that during the next hundred years, the Association will continue to emphasize and expand its activities for the public benefit, bringing to the solution of the enormous problems that confront us the expert knowledge, the skills, and the hard work of the lawyers of San Francisco.

Let me close on a somewhat different note. A while ago my former partner, Eustace Cullinan, Sr., wrote an article reminiscing about the practice of law in San Francisco. In it, he told this story:

"Some years ago, I met on the street an old friend, Judge I. M. Harris, who has since died. He stopped me and said: 'Eustace, where are the colorful, funny old lawyers who were in practice when you and I were youngsters?' I replied: 'Judge, don't you realize that in the eyes of the youngsters of today, you and I are more or less colorful and antique, if not comical, characters?' Of course, I included myself purely out of politeness to Judge Harris."

Mr. Chief Justice, it is gradually being borne in upon me that I at least, and perhaps even you and I, are approaching a similar status. On behalf of all persons similarly situated, I salute the Bar Association of San Francisco on the 100th anniversary of its birth; on behalf of all present, I wish it many happy returns!