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FAIRNESS AND FEASIBILITY

Address

by

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before

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FAIRNESS AND FEASIBILITY

Developments of the past week or ten days led me to reconsider momentarily my original plan to talk intimately tonight about some of the many matters in which the SEC and the Bar have a close community of interest. As you all know, political sunspots have recently charged the atmosphere surrounding our little SEC world with magnetic disturbances that tend to fill all developments and comments with the static of a seeming conflict. But the function of the SEC is not to fight--not to engage in conflict--but to administer and to try constantly, to improve the technique of administration. Therefore, at the risk that the meaning of my words may be distorted by the sunspots, I am proceeding with my remarks as originally planned. I realize that I am speaking at the further risk that some of those who may tune in on my wave length tonight may be disappointed to find that I am confining my remarks to matters which, I trust, will be of interest to the members of one of the outstanding Bar associations of the country.

Perhaps the SEC and the Bar work more intimately in connection with reorganization cases than in any other field of our activity.

It is well known that Chapter X of the Chandler Act was advocated by the SEC--was indeed largely a result of its published careful studies of malpractices in reorganization. The studies of the SEC revealed, glaringly, what every lawyer experienced in the field was more or less aware of--practices seriously inimical to the best interests of investors and to the good name of the Bar. The purpose of the Commission was not to condemn morally those past acts. It was to assay the social consequences of those practices, and, having done so, then--in the light of what were shown to have been adverse consequences--to urge that prophylactic legislation be enacted which would prevent the recurrence of such practices. The objective of the Commission was, in brief, to help to create new standards of conduct, so that, in the future, *after* the enactment of new legislation which the Commission recommended, those practices would be unlawful.

I cite the example of the SEC functions under Chapter X of the Bankruptcy Act as illustrative of the ability and willingness of government lawyers to accomplish sound results through the joint working-out, with members of the Bar and their clients, of reorganization problems in proceedings under the Act. Chapter X, as you know, is the successor to Section 77B. A good deal has been written and said, and need not be repeated, about what was wrong with 77B, and what was put into Chapter X to meet these deficiencies. But a minimum of background may be helpful in understanding the place of the Commission in these reorganization proceedings, the job that it does, and the value of its efforts to assist bench and bar in the solution of reorganization problems.

In Chapter X proceedings, corporations in financial distress find shelter under the bankruptcy--it used to be the chancellor's--umbrella. As courts have not hesitated to point out, such proceedings are essentially administrative in nature, and they have an outlook and approach, and a procedure, distinctly different from ordinary litigation. Under Chapter X,

corporations are dumped into the laps of the federal courts for two purposes: to hold off creditors so that the corporation can continue as a going concern, and to work out a plan of financial readjustment so that the company can safely leave the courts and stand on its own feet again. In a context of this kind, analogies to private issues between private litigants are likely to be deceptive and misleading, though at the time that Chapter X was under consideration in Congress there was no lack of complaint about the injection of the SEC into "private" disputes between "private" parties. These have had their counterparts since the Act became law, for now and again in one of the proceedings to which we are a party, an attorney asks bitterly how many bonds or shares the Commission owns to justify our taking a position contrary to his. But we see less and less of this as time goes on, and I think that our presence in these cases, and the propriety of our being there, are coming to be taken for granted.

Now a judge in these proceedings has two things to worry about. He must oversee the continued operations of the company--the administration of the estate--and he must see that a fair and equitable, and feasible, plan of reorganization is worked out for the company, before he can wash his hands of the case. What the Commission can do, and has done, to help the courts, and the attorneys, in a job of that kind, will be reflected in more detail in my comments to follow. But, in summary, one of the major purposes of the Act is to supply, through the SEC, expert technical assistance in breaking down the factual and financial complexities in which the affairs of any distressed corporation are almost inevitably enmeshed. The amount of financial and legal analysis which these situations require is well nigh inconceivable to any except practitioners in the field; it has made, and would ordinarily continue to make, inordinate demands upon the time and energy of our federal judges; and it is the primary function of the Commission to provide specialized analysis and comment concerning these matters which enable the courts to consider and rule upon them more easily and more expeditiously.

At the outset, there was considerable variety of opinion among bench and bar as to what might be expected of the SEC in Chapter X proceedings. Perhaps two views had more adherents than any of the others. Some felt that the SEC would regard itself as a plumed knight on a white horse attempting to impose utterly impractical views upon those whom it regarded as the forces of iniquity. On the other hand, a substantial number thought that the SEC would occupy the position of semi-official "kibitzer" or Greek chorus in reorganization proceedings, sitting on the side lines and expressing views to which no one would pay any attention. In actual practice the SEC has been neither of these, nor a combination of them. The record will show, I believe, that while the views expressed by Commission counsel are by no means uniformly accepted as gospel, our batting average has nevertheless been major league, as evidenced by the commendatory comments and letters in our files received from judges and members of the bar. Now what, more specifically, are these functions, how does the Act give us an entry into these proceedings, and what, in general terms, have we done in connection with our duties?

The function of the Commission as a participant in Chapter X proceedings is governed by a Section of the Act which provides that the Commission shall file a notice of its appearance in a proceeding under Chapter X if requested by the judge, and may do so upon its own initiative if the judge approves. Once we have filed a notice of appearance (as we have done in about 125 cases) the section provides that we are deemed to be a party in interest. The second, and only other, provisions which govern our functions are those which, in general, provide that plans of reorganization which the judge deems worthy of consideration *shall* be referred to the Commission for advisory report if a debtor's liabilities exceed \$3,000,000 and *may* be so referred to the Commission by the judge, if the debtor's liabilities do not exceed that amount. I should point out that, in this connection, the Commission has felt that its duties as a party require it to undertake, in every case, the same intensive legal and financial studies which are necessary for the preparation of formal advisory reports, whether or not such reports are required or will be requested.

These functions are complementary in their operation. As a party the Commission is, of course, represented at all important hearings in the proceedings, and, on appropriate occasions, files legal and financial memoranda in support of its views. But what is of equal importance is the fact that we have not been hesitant, in order to expedite these cases, to participate regularly in discussions and conferences among the parties, giving them fully our views with respect to the fairness and feasibility of reorganization proposals. We have, as a regular matter, consulted and conferred with the attorneys for various parties in these cases in advance of formal argument and hearing on nearly all issues, in order to see if they might be worked out in terms of practicable solutions, consistent with the nature and demands of reorganization proceedings.

It is worth emphasizing at this point that our functions under Chapter X are purely advisory, and that the courts, and the bar, accept or reject our advice and cooperation as they will. The fact remains in all these cases, and the courts have not been slow to appreciate it, that we have no axe to grind, and that our advisory assistance is entirely disinterested and objective.

Generally speaking, if the Commission moves to participate at all in a case, it does so at as early a stage as possible. The few exceptions to this rule relate to older 77B cases where our application for participation depends, as a practical matter, on the stage to which the proceeding has advanced. Once we have become a party to a proceeding, our first effort is to acquaint ourselves fully with the facts of the case. We have made it the practice to assemble the essential information bearing on the physical and financial condition of the company, the causes of its financial collapse, the quality of its management, its past operating performance and future prospects, and the reasonable value of its properties. Information on these matters is obtained through consultation with the trustee and his counsel and with other parties in the proceeding; through examination by the Commission's accountants of the books and records of the companies involved; and through the examination of witnesses in court. This information is complemented by the independent research of the Commission's analytical staff into general economic factors affecting the particular company and competitive conditions in the particular industry.

In general it can be said that the Commission's activities may be as extensive as the issues arising in each case and are varied in their scope. Before I go on to discuss the most important of those issues, the fairness and feasibility of proposed plans, let me comment on the salutary effect which the Commission's participation has had on compliance with the procedural provisions of Chapter X. Among the more important are the provisions for notice with respect to the various hearings required by the statute. It is obvious that these requirements are of significance to security holders in safeguarding their rights to be heard on all matters arising in reorganization proceedings under the statute. Not infrequently the parties fail to give notice to the various other parties entitled thereto, with regard to the hearings on the question of continuance in possession of the debtor or the retention in office of the trustee, or with regard to the statutory hearings for the approval of a plan. In a number of instances applications for interim allowances to the trustees and their counsel were made without the requisite hearing on notice to all creditors, security holders, and parties. Sometimes even though notice is given, it does not conform to the statutory requirements. It is therefore our practice in cases of this sort to call the matter to the attention of the interested parties. In all of these instances, and many others could be adduced, it was possible to accomplish a correction of the violations without undertaking any formal court action.

The substantial volume of motions and *ex parte* applications dealing with the administration of the estate, while largely routine, sometimes raise substantive and procedural questions of importance in which, of course, we are vitally interested. With respect to matters of this character, which are brought on by motion, there is usually ample time to form a conclusion as to the matters involved.

However, the *ex parte* applications present a more difficult situation. Thus, at the outset of a recent case, the usual host of *ex parte* applications were made and, of course, we knew nothing of what had happened until after the orders had been signed and served upon us. Some of these orders we felt were open to serious objection as not in compliance with Chapter X procedure. But we did not rush into court with motions to vacate. The problem was solved in a very practical way. We sat down with counsel for the trustee and arrived at a realistic formula which effected compliance with the statute and did not subject the estate to undue expense. The whole episode might, in fact, have been avoided had we received *before* the orders referred to were signed. It was decided, then and there, by the trustee's counsel and ourselves, to work out some arrangement which would eliminate the possibility of having a similar controversy arise in the future. Two considerations had to be kept in mind with respect to any such arrangement. The trustee could not afford to have his hands tied unduly by any rigid notice requirements and, on the other hand, we wanted to be relieved of being obliged to move to vacate any *ex parte* orders deemed by us to be improper, which were entered without prior notice. After considerable discussion we devised a practice whereby all *ex parte* orders in that important case are submitted on 48 hours' notice of settlement. This technique has worked out in eminently satisfactory fashion. Now, we are informed in advance as to all *ex parte* business, and if we have any objections or questions with respect to any specific applications, they are generally resolved in a mutually satisfactory fashion in advance of submission.

Another phase of the proceeding in which the Commission has frequently been of assistance relates to the reports of trustees. As you know, after a trustee or examiner under Chapter X has completed his investigation of the debtor's affairs, its financial condition, and the conduct of its management, it is his duty, under the statute, to submit a report of his findings to the stockholders, creditors, and other parties in interest. In this report, the trustee sums up his conclusions as to the feasibility and desirability of reorganization. It is our policy to be prepared to cooperate closely with the trustee in the preparation of these reports.

By that I do not mean that we gratuitously inject ourselves into the province of the trustee's duty. However, in large reorganizations involving numerous and complex problems--particularly in cases where the debtor has had a dubious corporate history--the trustee's reporting function is not an easy task. Under the circumstances, a trustee is frequently interested in obtaining our reaction with respect to the adequacy of the report before it is set up in final form and mailed out to the security holders. When the trustee requests our comments on his draft report, we give the draft careful study and then sit down with him and his counsel and discuss our suggestions with respect to the substance and form of his draft. In practice this system has proved eminently satisfactory to the trustees and to the Commission.

As I have mentioned, the most controversial of the issues presented in the course of the Commission's participation in reorganizations is the question whether a proposed plan is "fair and equitable, and feasible," as required by the statute. Although it is obviously difficult to design a pattern of feasibility into which all cases will fall, a number of matters of concern to the Commission in this category may be summarized. For example, the Commission has found it necessary in a number of cases to direct attention to the inadequacy of proposed working capital; to object to proposed funded debt or capital structures bearing no reasonable relationship to property values; and, generally speaking, to point out the conditions essential to a sound financial basis from which to look forward to successful operating results.

In appraising the fairness of plans, the Commission has taken the position that, to be fair, plans must provide full recognition for claims in the order of their legal and contractual priority, either in case of new securities or both; and that junior claims may participate in reorganizations only to the extent of the value remaining in the debtor's properties after the satisfaction of prior claims. The Commission has not considered a plan as fair which accords recognition to junior interests unless there is a residuum of value for such interests or such recognition is based on a fresh contribution made in money or money's worth.

The plan of reorganization in the Los Angeles Lumber Company case allotted the stockholders of an insolvent company a 23% participation in the assets and voting power of the reorganized company, although the stockholders had, in fact, no equity in the debtor's assets and had made no fresh and adequate contribution to the enterprise. The Supreme Court held that the plan was not "fair and equitable", and reversed the order confirming the plan. In so doing the Supreme Court reaffirmed the doctrine of "full or

absolute priority" as the test to be applied in determining the fairness of such a plan. This doctrine requires that a plan, in such a case, to be fair, must provide fully compensatory treatment for the claims of creditors or stockholders before stockholders may be permitted to participate.

In cases of liquidation no one questions the right of senior security holders to full payment before any distribution of assets to junior interests. Reorganization is an alternative for liquidation in the event of financial failure. It seeks to substitute going concern values for the forced sale values of liquidation, with the object of yielding greater ultimate returns to the senior interests, and allowing wider participation of junior interests if the values permit. But, as we conceive it, it presents no occasion or excuse for a different treatment of priorities in disregard of senior contract rights.

The Los Angeles Lumber case is neatly illustrative of the fact that the function of the SEC and its administrative activities are basically conservative in the best sense of that word. For several years, in its decisions and in published reports, the SEC has consistently maintained that, in a corporate reorganization, under the federal bankruptcy statute, the investor in bonds must be considered first. If anything is to be given to the junior interests represented by the old stock in the old company which is being reorganized, it must be only after there has been substantial satisfaction, in full, of the bondholders' prior claims. That position was opposed to the views of those who--like the Van Sweringen interests in certain railroads--insisted that stockholders must participate, at the cost of the bondholders, even if the old company was so hopelessly insolvent that the equity of the old stockholders had completely vanished and could not reappear in several thousand light years.

In the Los Angeles Lumber case, on behalf of the SEC and the ICC, the Solicitor General intervened as a friend of the court. The brief filed on behalf of the government led to a decision, last November, which upheld the position frequently theretofore asserted by the SEC.

One commentator wrote, with some surprise, that that was a "most conservative decision." His surprise, he explained, was due to his inability to understand why the SEC should urge such a conservative doctrine. That should have been nothing new. For the SEC statutes and the SEC administration of those statutes are based on the very sound doctrine that those who, by investing in bonds, help to supply the capital funds for our industrial machinery must be protected. Contracts made with them must be honest. They must, so far as practicable, receive what they were promised in those contracts. Shrunken junior interests in corporations must not prey upon or profit at the expense of senior interests.

On the other hand, other commentators have said of the protection given to bondholders, under the doctrine of the Los Angeles Lumber case, that it is bound to discourage equity financing. "If," they say, "the courts will exclude stockholders from participating in the reorganization of an insolvent company, investors will shun stocks and stick largely to investment in bonds. How is it that the SEC, which appears to favor increased stock financing of utility companies under the Public Utility Holding Company Act, also advocated the rule of the Los Angeles case?"

The answer is obvious: Bondholders of an insolvent over-bonded company, to be sure, "walk off with the company" when it fails and has no value above their bonds. - But what do they get? In the period preceding bankruptcy, the management, which is in control and representing the holders of a thin and insufficient equity, strives to avert bankruptcy by paying the bond interest through unwise economies, through skimping maintenance -- through policies which leave the corporate properties in sadly impoverished condition when reorganization arrives. So that, when the bondholders finally, after a tedious and expensive court administration, do "walk off with the company," it is often scarcely worth having. The assets behind their bonds have frequently been badly wasted. The vice of over-bonding is, then, a real menace to investors in bonds. It is desirable to discourage it. And one way to do so is to make it hazardous to invest in the stocks of a company whose bond structure is topheavy. It should be noted, in passing, that heavy bond financing is not characteristic of most of our prosperous industrials in our major expanding industries, such as, for instance, General Motors, General Electric, Du Pont, and United States Steel.

The decision in the Los Angeles case is, accordingly, immensely helpful in promoting sound equity financing. It discourages investment in the stocks of over-bonded corporations. Professor Dodd of Harvard, in the course of a brilliant discussion of that case in the current number of the Harvard Law Review,* says that "the enforcement of such a rule is less likely to make investment in shares unpopular than it is to deter investors from trading on a thin equity, a practice which may be discouraged with advantage to the community." In those terms, the encouragement by the SEC of increased equity financing in the utility field and its advocacy of the doctrine now set forth in the Los Angeles case are seen to be as one.

"Fairness" and "feasibility" are the statutory standards by which we must be guided in our activities under the Chandler Act. And "fairness" and "feasibility" are the unspoken guiding standards of the Commission in the administration of each of its statutes. They are, indeed, the twin objectives of our SEC administrative policy in our daily approach to the specific business problems which come before us.

For the SEC is constantly engaged in making compromises -- not of our plain statutory duties but of details -- in working out our regulations. In that task we have always invited the help of the Bar and have often had constructive suggestions from it for improvement in our rules and regulations which we value.

Our appreciation of that assistance is no mere gesture, as a distinguished member of your Association, Mr. John Foster Dulles, made clear when, last year, he remarked: "I know that, in the task of internal organization, the Securities and Exchange Commission welcomes the cooperation of lawyers who, while sympathetic with the aims and purposes of the Commission and with the administrative process, can bring to bear viewpoints which the Commission cannot otherwise readily secure . . . Here surely," he said, "is an

* I do not happen to agree with all his comments on that case.

opportunity to help the administrative bodies evolve in ways which will free us of most of the perils which our imaginations tend to conjure up. While this opportunity remains open, bar associations might suspend efforts, by indirection, to shackle and nullify the administrative process."

We do not wait for such suggestions for improvement of our regulations and procedures in aid of their greater workability. At this moment we are about to revise many of our regulations pursuant to the Holding Company Act. One revision which we have been carefully studying for some months, and on which we have obtained the views of some of your members, will be of particular interest to those of you who represent utility companies and utility bankers: For several years we have invariably required a hearing before issuing an order permitting or denying permission to issue utility securities. We are now giving careful consideration to dispensing with such hearings before *permitting* such securities to be issued, except in those cases where a public hearing seems important. The result would be an immense saving in the time and money of affected issuers. In another recent instance, to the great pleasure of many lawyers, we amended our rules about the fees of trustees and their counsel in bankruptcy reorganization proceedings involving utility companies.

The fact is often overlooked, that the government consists of human beings. That is a truism. But I recall a delightful misprint in a decision: "This is a proposition so obvious that only the intelligent could misunderstand it." To be personal for a moment, I was a member of this Association and practiced at the New York Bar before I joined the SEC; the shift of my place of residence by a few hundred miles patently could not have any vast chemical effects. Consequently, when you members of the Bar come to Washington to confer with the SEC and its lawyers you are meeting men who, like yourselves, are essentially legal technicians. The fact that we are occupying government positions does, however, mean that we must have some difference in our perspective: For, although your clients are also our clients -- since they are members of the public entitled to assert their aims and desires -- we have other clients, other interests who are not always present at the conference. We represent what is called the public interest. That fact means that the attitudes we take often cannot be identical with yours. But the respective attitudes can and should mesh.

I am not unaware of the fact that, sometimes, some few government lawyers act unwarrantably as if they were superior human beings. I have no sympathy whatsoever with that posture. The government lawyer must beware of developing what may be called the snobbery of disinterestedness. I mean a tendency to expect nothing but public disinterestedness from the lawyers who come to him representing private clients. That is an unrealistic, an unimaginative attitude. It recalls Pascal's description of the ordinary man's reason for unwillingness to meet a mathematician: "He would take me for a [geometrical] proposition." The lawyers who represent private clients are, in the nature of things, not untrammelled. It is their task to assist the private aims of their clients. And those clients are rightfully entitled to have their viewpoint maintained and defended. The

larger public interest is not the *immediate* province of the practicing lawyer. Yet, from criticisms advanced in the interests of a private client, public benefit can and does often come. Under a democracy, the public interest is, to a considerable extent, a function of the interaction of private interests.

There is room, too, in the private lawyer's argument, for an alert recognition of the larger public interest. For life, if it is to be civilized, should not run to extremes. There is much space between the pole of the exclusively private and the pole of the exclusively public. Many of those who practice before us know that often it is possible -- and wise -- for lawyers in private practice to refuse to work in the farthest north of the completely private. And that for several reasons: As citizens -- frequently leading citizens -- they have a responsibility to their country. As members of the Bar and officers of the Courts, they have a certain duty to uphold established law and the institutions of government. They know that they do an injury to their country, their government and the law when, in order to win some tactical point for a client, they unnecessarily injure an institution which, while imperfect, has large potential social value. It might be better to protect their clients at a smaller social cost. In short, each of them should be as much of a statesman as his client's interests will allow him to be. Needlessly to thwart the larger public interest is to ignore the rich latent possibilities of the lawyer's calling. Such statesmanship must, perforce, be interstitial, but it can often, for that very reason, be strikingly effective.

I think, again, of the attitude of Mr. Dulles. He is untiring in his devotion to his private clients' causes. But there was unmistakable statesmanship in his exposition, last year, of the need for recognizing the utility, in our complicated modern society, of the administrative agencies. His was no flattering adulation, no hypocritical laudation. Some of his criticisms were harsh; I happen to believe that, in part, they were too harsh. But his comments were made in a spirit of fairness. And he was manifesting a flexibility -- an instinct for the healthy growth of our institutions away from certain outmoded patterns.

Yet, he was, in truth, serving the long range self-interest of his clients. For enlightened self-interest does not call for a blind fixation of those aspects of the past which, while they preserve the immediate present, blocks the way to a decent future. We live in an era where such inflexibility can only cause economic and political break-down.

I recognize that resistance to change is not to be sneered at. It has much reason on its side. And also, at times, much blind unreason, with roots deep in the history of the human race: Certain tribes in East Africa object to the use of the iron hoe because they believe it keeps away rain. In the early 19th Century, the medical profession warned against the bathtub; it would, they maintained, produce rheumatic fevers, inflammatory lungs and all zymotic diseases. Simon Newcomb, one of our leading scientists, wrote in 1905 that "aerial flight is one of the great class of problems with which man can never hope to cope."*

* See article by Stern, in *Technological Trends and National Policy*, pp. 44-53.

Yet, in the field of mechanical inventions, the rate of adoption of change, in our day, is exceedingly rapid. In the field of "social invention," inertia is far greater. All our laws, and most of our social customs, were once novel products of creative imagination. But most new important tools or machines create pressures for new laws and institutions, because they usually create conditions to which some existing laws and customs are unadaptable. There results trouble: "Old laws seldom mix well with new tools or machines," says Crawford, in *The Conquest of Culture*. Man, relatively quick to make changes in mechanical things, is too often utterly blind to the fact that those new machines frequently require changes in his social habits.

The Declaration of Independence recognized the natural hostility to "social inventions" when it said that "all experience hath shown that mankind are more disposed to suffer while evils are sufferable than to right themselves by abolishing the forms to which they are accustomed." Literary critics observe that the public, in plays and novels, derives an extraordinary pleasure from the mere recognition of familiar objects and circumstances. Recognizableness confers immense emotional satisfaction. The new requires adjustment, reorientation. Disequilibrium results - which is unpleasant, fatiguing. Interruption of routine demands reflective thinking, keeping the mind in suspense while making judgments. And there is pain in every suspended judgment. Most of us, most of the time, are routineers who want to avoid that pain, that uncomfortable condition of tension. The old settled ways do not provoke mental discomfort, do not awake us from pleasantly tranquil dogmatic slumber.

Wise statesmanship makes allowance for those qualities of human nature, where it is not necessary to change - it is necessary not to change, it has been sagely observed of alterations in customary behavior. But when the central values of a civilization, its most cherished customs and institutions, are endangered by evils derived from other less valued and less central customs, then true statesmanship devotes itself to a modification of those less important and marginal customs. For, otherwise, the highly prized central values may be destroyed.

Old habits, accustomed ways of doing business, ought not to be altered overnight or without careful study of the effects of new proposed ways. With respect to change, men, roughly speaking, can be divided into three groups: Those to whom anything new is inherently wrong; those to whom everything new is inherently right; and those to whom novelty is a badge neither of rightness nor wrongness. The man wise in his generation is for as little change as is needed; but he wants every bit as much as is required. He is not an impatient zealot. He is opposed to a policy of incessant hectic change and adopts a policy of vital healthy social growth. He remembers, with Mr. Justice Holmes, "that continuity with the past is not a duty, only a necessity", and that "the past gives us our vocabulary and fixes the limit of our imagination ... but the present has a right to govern itself as far as it can." He is thus free of compulsions either away from or towards the traditional, and keeps his mind open on the question of the advisability of new departures.

That should be the outlook of the Bar. In connection with private enterprises, we lawyers are acknowledged experts in adjustment. Too often, however, some lawyers fail to employ that sure skill in their dealings with government. That is a dangerous attitude. In a period of rapid social change, that is bad medicine for our democracy. Adjustment, resilience, the art of wise compromise -- those tools of the lawyer's trade, need to be generously and widely applied to all our difficult current public problems.

Some remarks of Lord Macmillan are apposite here: "The lawyer of these days can no longer afford to keep his eyes glued to his desk and to limit his intellectual horizon to the law reports and the textbooks. A change, at first almost unobserved, but now thrusting itself prominently on our attention, is taking place in the sphere assigned to law in the community. Formerly, apart from matters of crime, the law was chiefly concerned with the technique of real property, conveyancing and succession, and the domestic relations, the application to particular cases of fairly well-established principles of contract and delict, and the settlement of mercantile disputes. "Nowadays," he said, "largely as the result of the industrial revolution and its consequences, the law is being made the instrument, through the legislature, of vast social and economic changes, and whether we like it or not we have to recognize that the lawyer of the future will have to accommodate himself to this altered outlook." The law, as Mr. Justice Holmes said, must "enrich itself from daily life" for, as he clearly saw, "the life of the law has not been logic; it has been experience."

I recall a short story by Peter Fleming in which a man describes his uncle as a man "not cursed with overmuch imagination, who saw no reason to cross frontiers of habit which the years had hallowed into rigidity." That uncle, who detested the unusual, had, be it noted, a child who was a werewolf. The story is a parable.