

Texas Takes the Lead

“My hat is off to Texas for leading the way in a new concept of the relationship of the lawyer to the public.”

By Erle Stanley Gardner of Temecula, Calif.

Some time ago the *American Bar Association Journal* published an article by me in which I suggested that attorneys who wished to make a contribution to the cause of justice could do nothing better than investigate the comparatively few but legally significant cases of innocent persons wrongfully convicted of crime, the causes that made such convictions possible, and the activities of the so-called “Court of Last Resort” started by *Argosy* magazine.

Since that time, quite a bit of water has run under the bridge. Even with its limited investigative resources *Argosy*’s Court of Last Resort has shown that a number of innocent persons actually have been wrongfully convicted. In some ten or twelve of those cases remedial action has already been taken by the authorities. It has also become increasingly apparent that there is a tremendously enthusiastic public support for this program, a support which emanates from the rank and file of the citizens themselves.

Attorneys volunteering

Quite a few attorneys have written in volunteering to aid in *Argosy*’s program. Henry H. Franklin of Peterborough, New Hampshire, a young attorney who had a background of experience as an investigator for the FBI, suggested that some of his former associates would undoubtedly want to join in our work. He asked permission to get in touch with these associates and we, of course, told him to go ahead. It was decided that we would start with a very small, active committee well scattered throughout the United States and see what could be accomplished.

This committee was organized and has rendered most valuable assistance to the work being undertaken by the magazine.

All-out program

From time to time State Bar Associations have asked me to appear and explain something of the work of the Court of Last Resort; but it remained for the State Bar of Texas to take the lead in putting on an all-out program.



“A spontaneous gesture on the part of individual members of the Bar of Texas utterly floored us,” Mr. Gardner relates. The gesture was the signed pledge by 350 Texas lawyers to donate their time and services to help in any cases the Court of Last Resort investigates in Texas.

I was invited to be a guest speaker at the annual banquet on July 4th; and on July 5th arrangements were made to have a panel consisting of all members of the investigative committee of the Court of Last Resort appear before the Bar Association. This meeting was thrown open to the public.

Steeger was moderator

Harry Steeger, president of *Argosy* magazine, acted as moderator; Dr. LeMoyn Snyder, medicolegal expert (he is both an attorney and an M.D.); Raymond Schindler, the famous detective; Alex Gregory, polygraph (lie detector) expert, past president of the International Society for the Detection of Deception; Tom Smith, full-time investigator and former warden of the Washington

State Penitentiary at Walla Walla; Bob Rhay, also full-time investigator, with a previous background of classification experience in the State Prison at Walla Walla; and the writer were all stationed at a long table equipped with microphones connected to a public address system, and questions were asked by members of the Bar.

This was, of course, a novel program, and an ambitious program, one which was well designed to determine the extent of the public interest in actual justice. The response was overwhelming.

Background

Perhaps in order to understand that which follows and the action taken by members of the Texas Bar Association, the reader should have some understanding of the background.

Texas is a fabulous state. It is an empire of self-contained cities, and sprawling cattle ranches running into the hundreds of thousands of acres. Whenever I drive across Texas I am minded of the anonymous poem containing the plaint of a fellow traveler who had preceded me and which is, "The sun has riz, the sun has set, and here we is in Texas yet."

The citizens have fierce pride in their power of achievement which has given rise to many humorous stories. One of my favorites is that of the man with the Texas drawl who said, "My pappy always told me never to ask a man where he's from. If he's from Texas he'll find some way of letting you know in the first three minutes, and if he ain't, there's no use in humiliating a perfect stranger."

State spirit

This state spirit is evident in just about everything that Texas does, and is evident in the Bar Association itself. There is an enthusiastic, cohesive support that is particularly distinctive.

And as for hospitality—the South is noted for its hospitality. Some three weeks earlier I had addressed the Junior Section of the Mississippi State Bar, and had taken the night train with a warm heart and genuine reluctance to leave so friendly a state. This, however, was a purely personal albeit unexcelled hospitality extended to me as a speaker. The action of the Texas Bar was not directed toward any speaker or any person, but toward *Argosy's* entire Court of Last Resort and toward the cause of justice as such. For that reason it is, I believe, sufficiently significant to be of interest to the entire American Bar Association.

I have spent considerable time in Texas, know the ways of the people and love them, and was, therefore, not entirely unprepared for that which happened. I had, in fact, warned my associates to prepare themselves. But no mere warning could have possibly prepared them for the extent of the activities of the Texas Bar.

Welcoming committee

I was first on the scene, arriving on the morning of July 4th. I was met at the train by a welcoming committee which must have comprised nearly a hundred and fifty, and which included some of the most prominent lawyers in the state. There was a personal representative of the Governor's office to deliver a certificate under the great seal of the state proclaiming me an honorary citizen of Texas; the mayor pro tem of Houston was there in person to present me with a proclamation that Friday, July 4th, had been proclaimed Erle Stanley Gardner Day in the city of Houston. This welcoming committee included justices of the Supreme Court, the Courts of Appeal, the recent Secretary of State and candidate for Attorney General, a former Attorney General, the president of the Bar Association, the president-elect of the American Bar Association, the ex-assistant to the Governor of Texas, a representative of the Mexican Bar Association, and various of the more prominent attorneys of the state.

Cavalcade of cars

We were taken to a cavalcade of cars which, with motorcycle escort, proceeded at once to the Rice Hotel, which was headquarters for the convention. There, in the huge lobby, were prominent displays featuring *Argosy's* Court of Last Resort, and photographs of the various members of the investigating committee.

I mention these things in order to give some picture of the tremendous enthusiasm and to give a faint sketch of the spirit of Texas, which, to anyone who has not encountered it, is like trying to describe atomic bombs in cap-pistol words.

From time to time during the day, as other members of the investigating committee arrived, they in turn were greeted with huge welcoming committees and escorted to the hotel where various prominent Texans had vied with one another to see that our wants were not only taken care of, but anticipated. For instance, if any member of the party left a call for 7:30 a.m., he could be certain that at 7:35 there would be a knock on his door, and coffee and piping hot, fresh doughnuts would be delivered along with the morning papers. In short, the only way to describe the whole thing is that it was fabulous, and it was this atmosphere of enthusiasm, this lusty Western hospitality, which furnished the background for the entire meeting. I mention it in some detail because I think it must be taken into account in order to understand the tremendous, overwhelming response of the Bar, and the public interest which was aroused.

Revised plans

During the afternoon the banquet seating arrangements had to be completely revised in an attempt

to crowd fifty percent more people into the banquet hall. This was finally done in the general hope that it would take care of the crowd. Two hours later all of the extra tickets had been sold and the Bar Association was regretfully turning away hundreds of applications.

I am always a purely extemporaneous speaker, and I think any such speaker realizes that his talk is largely a reflection of the audience reaction. I can only say that I have never addressed a warmer, more friendly audience, and much of that audience response was due to the friendly cooperation of the Chief Justice of the Supreme Court of Texas, the Honorable John E. Hickman, who cheerfully joined with me in some good-natured ad-libbing that divested the proceedings of any atmosphere of excessive formality and helped give the legal truths I was trying to establish a sugar coating of humor. (My profound thanks to an outstanding jurist whose learning in the law has not in anywise impaired the beating of a big human heart.)

Open discussion

The panel discussion the next day was open not only to the lawyers but to the public. I am able only to estimate the attendance. I understand there were nearly two thousand in the hall itself. Adjoining rooms, and even the corridors, had been connected with the public address system so that people who could not be in the main hall were still able to hear the proceedings.

After the close of this panel, Cecil E. Burney, president of the State Bar Association, announced that he had some presentations to make.

A more or less surreptitious appraisal had been made of our hat sizes, so I rightly surmised that we were to be the recipients of some good five-gallon Texas hats to go with our honorary citizenships and proclaim us as being from Texas whenever we traveled around the country.

Spontaneous gesture

But the presentation which utterly floored us and which was apparently a spontaneous gesture on the part of individual members of the Bar was a sheaf of papers handed Harry Steeger by the president, papers which stated that the signers were familiar with the work of Argosy's Court of Last Resort, were interested in the cause of justice, and were willing to donate their time and services in doing anything which could be done to help in any cases Argosy might be investigating in the state of Texas.

There was page after page after page of signatures, including some of the most prominent and influential attorneys in the state. These signatures included those of prosecutors, able defense attorneys, corporation lawyers, members of the Supreme and Appellate Courts, a former Attorney General, recent Secretary of State of

Texas, as well as younger members of the Bar who could be expected to donate their time only at a distinct sacrifice. These signatures numbered over three hundred.

Texas is a land of great wealth and of fabulous fees. I happen to know that some of the attorneys who signed those papers have an income which makes their time so valuable that only the most affluent corporations, the most wealthy oil magnates can afford to retain them, yet every minute of their working days is packed with appointments.

This was one of the most touching instances of public support the so-called Court of Last Resort has ever encountered, and to my mind it was one of the most significant from a standpoint of public relations.

Basic principles

I think many members of the Bar failed to appreciate the basic principles on which its public relations are founded.

While I do not have accurate figures, I would assume that probably less than ten percent, perhaps less than five percent, of the members of the Bar handle the cases of those accused of crime; yet probably eighty percent of the public concept of the function of a lawyer revolves around criminal cases.

A relatively small percent of lawyers handle personal injury cases, yet these cases are a large factor in the problem of public relations for the Bar as a whole.

However, the field of criminal law is by far the most important from a standpoint of public relations, and to a large extent governs the general concept of the Bar in the minds of the average citizens.

Because some affluent corporation counselor wouldn't let a man accused of crime even enter his office, let alone get past his secretary, he feels that he is aloof from that branch of the practice.

Actually his reputation as a member of the Bar is largely dependent upon that which is being done by the men who *are* engaging in criminal practice.

Canons of ethics

Leaders of the Bar try to control what is done, by canons of judicial ethics. To some of these canons, many criminal attorneys pay only lip service, and some of them are avoided completely.

It is my feeling that the Bar as a whole can never make any great strides in the field of public relations until it has adopted a sane, healthy attitude in regards to the administration of criminal law.

Our friends, the doctors, have achieved pretty good public relations. They have a far better sense of public values than do the lawyers. One would hardly expect them to state en masse that the better doctors would henceforth eschew the treatment of any contagious diseases

and would leave that class of work to a fringe of the profession whose ethics were more or less widely disapproved.

Doctors are interested

The doctors as a whole are interested in the health of the community as a whole, as well as in the health of their individual patients.

It seems to me that it is high time for the Bar as a whole to take a keen interest in the administration of all branches of justice.

I am glad to report that the American Bar Association has already appointed a special committee to investigate the legal significance of the cases of wrongful conviction which have been uncovered to date, and report to the Association.

I personally think it is high time for the entire Bar to take a greater interest in what is going on in the field of criminal law. I think it is high time for the Bar to adopt a position that an attorney who sells his brains and ability to the organized underworld is guilty of unprofessional conduct and should be disbarred. On the other hand, whenever any citizen is accused of crime, that citizen is entitled to a trial by jury, and that doesn't mean that he should be prejudged by some lawyer or by some group of lawyers. It means he should be judged by a jury.

Interesting case

In one of the most interesting criminal cases I was ever called upon to study, the court-appointed attorney who was representing the defendant quite evidently felt the man was guilty. The crime was a revolting sex crime and there was apparently overwhelming evidence proving the guilt of the defendant.

An experienced trial attorney, reading the transcript, can very readily see that the attorney for the defense felt that he was in court for the purpose of seeing that his guilty client received a "fair" trial, which meant that the legal rules of evidence, procedure, etc. were to be faithfully observed. But there was a complete lack of vigor and an absolute failure to dig in and analyze every factor in the evidence.

After the man had been convicted and sentenced to death, it turned out that a vigorous analysis of the evidence itself disclosed certain factors so strongly indicating the man's complete innocence that it is virtually impossible to believe a jury could have convicted him if the evidence in the record itself had been properly analyzed. And evidence was subsequently developed entirely outside the record which completely disproved the testimony of the main witness for the prosecution.

Solemn duty

I don't think that it is any part of the duty of an

attorney to identify himself with a defendant who is on trial in a criminal case. I do believe, however, it is his solemn duty to adopt an attitude in front of the jury somewhat as follows: "I am a member of the Bar. The Bar in the long run is the custodian of our individual liberties, of the liberties of this defendant, of the liberties of you gentlemen of the jury and the liberties of all citizens. The law provides that each man is entitled to a trial by jury, and that the jury shall consider not the question of whether the man is or is not guilty of the crime, but whether the proof establishes his guilt beyond a reasonable doubt.

"This constitutional safeguard is not a shield for this particular defendant. It is the safeguard of your liberties and of mine, and it is my duty as a member of the Bar to see that this safeguard is constantly upheld and *respected*.

"It is not up to me to say which witnesses I believe or which witnesses I disbelieve. That is up to you. But it is up to me to present this man's defense to the best of my ability and with all the vigor at my command so that you members of the jury can reach your decision as to which witnesses to believe and which witnesses to disbelieve."

Vital need

In short, I think it's time for the Bar as a whole to become interested in the cause of justice as a whole. And until that is done, I don't think we're going to find any great improvement in the field of public relations.

Therefore, I feel that this action on the part of the Texas Bar is one of the most significant actions which has ever been taken by any organized group of attorneys anywhere. I confess to feeling a choked up surge of gratitude when I try to appraise the significance of this action. I think it is destined to have very great effects and very far-reaching effects. I feel that it should be given the widest publicity.

Here is conclusive written evidence that the Texas lawyers are as interested in the cause of justice in this country as the physicians are interested in the public health.

Responsibilities dodged

I have been probing around in this field long enough to know that there is a great deal that is seriously wrong in the administration of criminal justice in this country. And by the administration of justice I include all phases of law enforcement as well as the field of penology. The lawyers as a whole are the custodians of our liberties; the lawyers as a whole have been dodging their responsibilities.

It is just as though the heart specialist would say, "I am not in the least interested in the sociological developments for the prevention of venereal diseases because I don't have anything to do with that branch of medicine."

Equal standing

But when the Medical Association meets, you will find the specialist on heart diseases standing shoulder to shoulder with his brethren in advocating steps that will safeguard the public health in connection with the spread of venereal diseases.

I don't think members of the Bar as a whole are inclined to realize that in the eyes of the public the Bar as a whole is the custodian of liberties and of the rights of the people as a whole. I feel that this action on the part of the Texas Bar is one of the most encouraging steps I have yet seen. I think it is going to have widespread significance, and my associates and I propose to do whatever we can to see that it is properly publicized.

Inherent vitality

I think the Texas Bar has placed itself in the vanguard in this matter because it has realized the responsibilities of the legal profession, and because of the general inherent vitality of the Texas Bar itself.

I have attended a good many Bar meetings. I have seen some State Bars where the association activities were quite evidently a more or less unimportant side line. I have been in some places where quite evidently the integrated Bar was the mainspring of all legal activities in the state.

I think Texas has one of the most livewire State Bar Associations I have ever encountered.

Year sacrificed

Cecil Burney, the retiring president, sacrificed an entire year of his time to carry out his responsibilities of office. I think all members of the American Bar Association know the extent to which Cody Fowler gave of his time and energy, and the extent to which Howard L. Barkdull has made sacrifices in connection with his duties. (I presume other presidents have made similar sacrifices, but it is only in the last two years that I have had a sufficiently close contact with the administrative affairs of the American Bar Association to realize how seriously the responsibilities are taken by its officers.) We can expect that members of the American Bar Association might well be able to make these sacrifices, but when we find a president of a State Bar doing so, it is highly significant.

Coordinated effort

The incoming president of the Texas Bar, Glenn Turner, is equally determined that he is going to begin where Burney left off and carry on the good work. But this Bar organization isn't by any means the result of one man's work. From all I could see of it, it is a perfectly coordinated effort. Park Street, the program

chairman, and those who assisted him handled their work with the greatest efficiency. I am given to understand that the banquet had an attendance that was more than twice that of any previous banquet. Emergency arrangements had to be made at the last minute. There must have been a host of decisions and emergencies, yet these matters were all taken care of and handled so efficiently that as guests we didn't even realize the extent and nature of the problems.

I probably sound enthusiastic, and the reason is that I am enthusiastic.

The first step

I believe that this mass action on the part of Texas attorneys in joining with the work we are doing is the first step in initiating a better understanding on the part of the general public as to the function, responsibility and interest of the Bar generally.

And I firmly believe the lawyers generally are never going to improve their public relations until they realize their responsibilities in the field of justice.

So long as conditions exist in the administration of criminal law which reflect on the reputations and abilities of the lawyers responsible, so long will the Bar as a whole be in relative disrepute.

Accusation

So long as there is a substantial group which is "not interested" in the administration of criminal law, just so long will the Bar as a whole be dodging its responsibilities.

As lawyers we are the custodians of the liberties of the citizens insofar as those liberties require legal presentation. It's high time all lawyers began to regard the liberties of all citizens as their group responsibility. When that is done, when the lawyers have that keen regard for the general liberties of the citizens that the doctors have for the public health, then we'll begin to have better public relations.

I take my hat off to Texas for leading the way in a new concept of the relationship of the lawyer to the public.

Vigorous action

I think the action of the Texas Bar is going to bear fruit. I hand it to these men for taking *action*, a vigorous action which is in every way in keeping with the traditions of Texas. With some three hundred and fifty lawyers in the state of Texas joining hands to watch over the liberties of its citizens, and ready to join with us in investigating the cases of any innocent men who may have been wrongfully convicted, Texas can rest assured their Bar is one of which every citizen can well be proud. **TBJ**